Surplus Land Act (Part 2)

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Surplus Land Act (Part 2)*

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**Please note that this paper follows up on a paper by the same authors titled "Introduction to the New Surplus Land Act", which was prepared for the League of California Cities' Spring 2024 City Attorney conference.*

Surplus Land Act (Part 2)

In late 2023, Gov. Gavin Newsom signed Senate Bill 747 and Assembly Bill 480 ("New Legislation") into law to make common-sense revisions to the Surplus Land Act ("Act") that provide clarity and additional flexibility to local public agencies[1] and private developers.

The New Legislation took effect on January 1, 2024. As a result, the Department of Housing and Community Development's ("HCD") Surplus Land Act Guidelines issued in 2021 ("2021 Guidelines"), which interpret and implement the Act, became outdated. On February 23, 2024, HCD published draft updated Guidelines ("Draft Updated Guidelines"), intended to align with the New Legislation. After a 30-day public comment period, HCD evaluated public comments, prepared responses to the same, incorporated changes to the Draft Updated Guidelines, and ultimately issued final updated Guidelines ("Final Updated Guidelines") on August 1, 2024.

HCD published the Final Updated Guidelines on its webpage for Public Lands for Affordable Housing Development. In addition, HCD published (1) responses to the public comments received on the Draft Updated Guidelines and (2) a redline showing the differences between the Draft Updated Guidelines and the Final Updated Guidelines. While the redline is helpful in showing how HCD incorporated public comments into the Final Updated Guidelines, it does not highlight the numerous changes between the 2021 Guidelines and the Final Updated Guidelines, which are the changes that agencies most urgently need to understand to ensure they remain compliant. Our office has prepared a redline showing these changes, available here.

This paper summarizes and analyzes some of the key aspects of the Final Updated Guidelines. Please note that this is not an exhaustive analysis of all changes. Agencies, in consultation with legal counsel, should closely review the Final Updated Guidelines to ensure they remain compliant with the Act.

General Applicability and Definitions

The New Legislation made several changes to the general applicability of the Act and the definitions set forth therein. The Final Updated Guidelines not only incorporate these updates, but also expand on certain changes.

Leases

The New Legislation clarified that the Act only applies to leases of more than 15 years and in which development or demolition will occur, which was a significant change from the 2021 Guidelines which had asserted that the Act applied to leases of as little as 5 years (subject to some exceptions). The Final Updated Guidelines not only incorporate this clarification but also expand on it by addressing the impact of renewal terms and purchase options and defining "development" and "demolition".

[1] For clarity, the Act generally applies to local public agencies in California, which we will refer to herein as "agencies". Certain agencies (e.g., districts) are able to utilize streamlined procedures pursuant to specific provisions in the Act, as further discussed herein.

Renewals, Extensions, and Purchase Options

Section 102(i)(1) of the Final Updated Guidelines states that the term disposition, as used in the Act, includes the entering of a lease for surplus land for a term longer than 15 years, inclusive of any extension or renewal options included in the terms of an initial lease entered into on or after January 1, 2024. A lease with a term of 15 years or less that includes an option to extend or renew is a disposition if the sum of the term of the original lease and the extension or renewal is greater than 15 years. The Final Updated Guidelines also assert that a lease that is for a term of 15 years or less that includes an option to purchase is considered a disposition of surplus land at the time the lease is executed.

The inclusion of renewal and extension terms in calculating the length of a lease is not particularly surprising. However, deeming execution of a short-term lease that includes a purchase option a "disposition" under the Act seems odd. A purchase option is a continuing, irrevocable offer to sell property to an optionee within the time constraints of the option contract. It is often not an offer to sell the property immediately. Rather, the option may not become exercisable unless and until the tenant has leased the property for a minimum amount of time or some other condition precedent occurs. This creates some tension with the Final Updated Guidelines. Specifically, if execution of a lease with a purchase option is a "disposition" under the Act, the agency would need to go through the offer process immediately, even if the sale contemplated by the option would not happen for several years. Would the agency's notice of availability offer the property for sale immediately? Or, would the agency be permitted to draft the notice of availability such that it essentially offered an option contract rather than an immediate sale? These questions are not answered in the Final Updated Guidelines. Further, couldn't the agency simply execute an option contract with its short-term tenant and make the option subject to the agency's compliance with the Act, such that compliance with the Act was a condition precedent to the optionee exercising the option? The Final Updated Guidelines seem to prohibit such a structure, even though it would arguably comport with the Act.

Development and Demolition

Notwithstanding Section 102(i)(1), Section 102(i)(2) of the Final Updated Guidelines provides that "disposition", as that term is used in the Act, does not mean (i) the entering of a lease for surplus land for a term of 15 years or less, inclusive of any extension or renewal options included in the terms of the initial lease, or (ii) the entering of a lease for surplus land on which no development or demolition will occur, regardless of the term of the lease. The Final Updated Guidelines then provide that "development" means the process of changing the character of the land from its existing condition to a more useable condition by constructing or placing a building or buildings on the land, preparing the land for such construction, or reusing an existing building for a purpose other than the purpose for which it was originally built or designed, while "demolition" means the deliberate dismantling, destruction, or removal of an entire building or significant portions of a building, rendering it unfit for use. The Final Updated Guidelines also state that development and demolition do not include making improvements, renovations, or updates to an existing building, while preserving its structural integrity, or replacing an existing

building that has reached the end of its structural life with a building that will be used for the same purpose.

In light of Section 102(i)(2), a lease of 14 years would not be subject to the Act, even if it included development or demolition. A lease of 16 years, on the other hand, would be subject to the Act if it included development or demolition, but it would not be subject to the Act if it did not include development or demolition. Taking this term length rule together with the definitions of development and demolition, it seems that the Act (as interpreted by HCD) is intended to prevent transactions such as ground leases, where a developer-tenant constructs a new improvement on agency-owned land. This type of transaction is not uncommon for agencies – for example, we have seen agencies use a ground lease model to allow a tenant to construct a hotel and a fitness club on agency-owned land. Moving forward, agencies will need to conduct a surplus land act analysis prior to using such a transaction structure.

Agency's Use

The New Legislation also clarified that property that is used for the "agency's use" (and therefore not surplus land) includes: (i) property owned by a port that is used to support logistic uses, sites for broadband equipment or wireless facilities, and waste disposal sites, and (ii) property owned by certain districts and disposed of for commercial or industrial uses or activities or for the sole purpose of investment or generation of revenue, provided that the disposition will directly further the express purpose of the agency or is authorized by statute. The Final Updated Guidelines incorporate and expand on this change.

Specifically, Section 104 of the Final Updated Guidelines redefines "agency's use" to align with the recent changes to the Act. It states "'agency's use' shall include, but not be limited to, land that is being used for agency work or operations, land that an agency plans to use for agency work or operations pursuant to a written plan adopted by the agency's governing board, or land that is disposed of for agency work or operations." It also defines "agency work or operations" as including, but not being limited to, utility sites; watershed property; land being used for conservation purposes; land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, property owned by a port that is used to support logistics uses, sites for broadband equipment or wireless facilities, buffer sites located near sensitive governmental uses, including, but not limited to, wastewater treatment plants, and waste disposal sites.

Section 104 also clarifies that "agency's use" shall not include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development. For non-district agencies, the utility of the "agency's use" exemption is likely limited. Non-district agencies can only use this exemption if the land is being used, planned to be used, or disposed of for agency work or operations, which cannot include commercial or industrial activities. Thus, a non-district agency likely cannot use this exemption to lease land for the purpose of raising revenue to support the agency's operations, since the lease would be for the purpose of generating revenue. However, an agency with clear statutory authority to develop and operate energy facilities may be able to lease land to a developer for the purpose of developing an energy facility that is ultimately owned by the agency, since the lease would be in furtherance of the agency's work and operations.

In the case of an agency that is a district[2], excepting those whose primary mission or purpose is to supply the public with a transportation system, "agency's use" may include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development; or may be used for the sole purpose of investment or generation of revenue if such use either (i) directly furthers the express purpose of the district's work or operations, or (ii) is expressly authorized by a statute governing the district, provided the district complies with Government Code section 54233.5 where applicable and takes action in a public meeting declaring that the use of the site meets one of these two requirements. For these districts, the "agency's use" exemption is likely to have a broader impact. In fact, one could argue that nearly every disposition by a district is for the agency's use, provided that the disposition produce revenue and that revenue be used to further district work or operations. However, a more conservative interpretation would be that only dispositions in which the transferee's use of the land furthers the agency's work or operations would constitute a disposition for the "agency's use". It is unclear what interpretation HCD will take. It will be interesting to see how HCD reviews and responds as agencies begin submitting exempt surplus determinations to HCD based on this "agency's use" exemption.

In addition to further defining "agency's use", the Final Updated Guidelines add two procedural requirements related to this exemption, which will apply both to districts and non-district agencies, to the extent they use the "agency's use" exemption. First, the Final Updated Guidelines require that an agency that plans to dispose of land for the agency's use shall provide documentation to HCD that the land meets the definition of agency's use in Section 104(a) at least 30 days prior to disposition. An agency that is using or plans to use the land for the agency's use but is not disposing of the land, as defined in Section 102(i) of the Guidelines, is not required to send documentation to HCD. These provisions are generally not surprising – HCD will have the right to review and approve exempt surplus declarations prior to a disposition, but HCD is less concerned with such a determination if no disposition is occurring.

Second, the Final Updated Guidelines provide that, in cases where an agency (including districts) will only use a portion of land for the agency's use, the agency must comply with the Act when disposing of the portion of land not being used for the agency's use, even if revenue generated on that portion of the land is used to support the development on the portion of land that qualifies as agency's use. An agency may issue an NOA that includes reasonable conditions or restrictions, as provided in section 202(a)(2)(D)(iv), noting that a portion of the land will be used for agency's use. This requirement that agencies essentially bifurcate their properties when only a portion will be used for "agency's use" will likely be challenging to implement. For example, if an agency wants to lease out an existing building on a piece of property and determines that the lease of the building is for the agency's use, can the agency also lease out the parking lot, even if the tenant parking in the parking lot in and of itself does not support the agency's use? Or, would the agency be limited to only leasing out the building, wherein the tenant's activities will directly support the agency's work and operations? If the latter, what can the agency do with the parking lot? Where will the tenant park? These questions are not answered by the Final Updated Guidelines.

[2] As used herein and in the Act, "district" means all districts within the state, including, but not limited to, all special districts, sewer, water, utility, and local and regional park districts, and any other political subdivision of the state that is a district.

Agency's Surplus Declaration and Offer Process

The New Legislation also made several changes to how agencies declare property surplus (or exempt surplus) and offer surplus property to the requisite entities. The Final Updated Guidelines not only incorporate these changes to the Act, but also expand on certain changes.

Administrative Declarations

The New Legislation authorized agencies to declare certain categories of exempt surplus land publishing a 30-day notice finding that the land is exempt surplus, rather than making such a finding in a public meeting. However, the New Legislation did not include any detail regarding the process to publish such a notice. Thankfully, the Final Updated Guidelines add significant detail regarding what this process is required to look like.

Specifically, Section 400(e) of the Final Updated Guidelines provides that an agency declaring land exempt surplus via a 30-day public notice must comply with the following:

- The notice must include a citation to the exemption (e.g., Government Code section 54221(f)(1)(A) for an affordable housing project), a contact name and email for public comments, and findings/reasons the land meets the exemption.

- HCD will accept online or newspaper publishing of the notice with evidence it was published and made available for 30 days (daily publication is not necessary).

- For newspaper publication, HCD will accept a notice published in a newspaper of general circulation in the agency's area.

- For online publication, the notice must be available for the full 30 days, at minimum.

Additionally, pursuant to Section 103(c)(1) of the Final Updated Guidelines, a copy of the notice needs to be provided to all of the entities identified in Section 201(a) of the Final Updated Guidelines (i.e., the priority offer recipients under the Act).

The additional detail regarding the process to administratively declare property surplus is helpful and is generally consistent with what many agencies assumed the process would require.

Participating in Negotiations

As we are all aware, the Act requires agencies to negotiate in good faith for at least 90 days with entities that respond to the agency's notice of availability. The New Legislation identified certain activities that do not constitute "participating in negotiations," including activities such as obtaining an appraisal or issuing a request for proposal in accordance with certain exempt surplus

designations. Under the New Legislation, these steps do not constitute "participating in negotiations." Section 103(f) of the Final Updated Guidelines further provides that "participating in negotiations" does not include any of the following:

- Issuing an RFP or RFQ to the entities identified in Government Code section 54222(a) for the purposes of meeting the affordable housing exemptions in Government Code section 54221(f)(1)(A), (F), (G), (H), and (I);

- Negotiating a lease, exclusive negotiating agreement, or option agreement for the purposes of meeting the affordable housing exemptions in Government Code section 54221(f)(1)(A), (F),(G), (H), and (I); or

- Negotiating with a developer to determine if the lease provisions of Government Code section 54221(d)(2) can be met.

While this provides clarity for agencies, it may not be helpful clarity. To elaborate, prior to the New Legislation and the Final Guidelines, the ambiguity as to what constituted participating in negotiations could sometimes be helpful to agencies, since they could point to a variety of activities as arguably evidencing participation in negotiations and thus count it towards their 90 day requirement. Now, with the new clarifications, there is less ability to make such an argument. As a result, agencies may ultimately conduct negotiation type activities for much longer than 90 days.

The Final Updated Guidelines also include two other notable provisions related to the negotiation process. First, Section 200(a) provides that an agency may not solicit or accept offers to purchase or develop surplus land until the agency has first sent out notices of availability, and, if the agency receives any responses to the notice of availability, completed negotiations with those parties. It is unclear what "solicit" and "accept" mean. If an agency posts its notice of availability on its website, as many agencies do, is that considered an impermissible solicitation? If a private entity sees a notice of availability on HCD's website or an agency's board materials and submits a response to the agency, even though the private entity is not a priority respondent under the Act, is the agency's receipt of such an offer an impermissible "acceptance"? Could the agency hold the offer until the statutory offer process is complete and then respond? Or, would the agency need to completely ignore the offer, even after the statutory process is complete? These issues are not addressed in the Final Updated Guidelines.

Additionally, Section 202(a)(1)(C) states that, for the purpose of disposition of surplus land in Section 400(b)(1) of these Guidelines, the agency must establish and document that good faith negotiations have taken place with each respondent. The following activities are listed as examples of demonstrating good faith negotiations (and thus are activities that agencies should aim to document): making a serious effort to meet at reasonable times and attempt to reach agreement; responding to letters of interest; responding to and considering reasonable offers to purchase or lease; not requiring that development proposals significantly deviate from the notice of availability; and not "arbitrarily" ending active negotiations after 90 days. You may be wondering how does an agency evidence these activities?: Document, document, document. Agencies will be well-served to build detailed files showing all meeting activity, email correspondence, etc. that

shows the agency's engagement in the offer and negotiation process. However, it may be challenging to show that an agency did not "arbitrarily" end active negotiations after 90 days, particularly since "arbitrarily" is not defined in the Final Updated Guidelines. This language seems to grant HCD significant discretion to subjectively judge whether an agency's activities during negotiations were "enough", which (in our humble opinion at least) arguably exceeds the scope of HCD's authority.

Enforcement and Penalties

The New Legislation also made minor amendments to the Act's provisions on enforcement and penalties. The Final Updated Guidelines incorporate said amendments and also generally update and restructure the prior language on enforcement and penalties.

HCD's Review Process

Under the 2021 Guidelines, HCD would review the various materials submitted by agencies in accordance with the 2021 Guidelines and issue a "Notice of Violation" if HCD determined that the proposed transaction would violate the Act. The Final Updated Guidelines amend HCD's review process and require HCD to prepare additional written documentation as part of its review process.

Specifically, HCD will:

- Issue a "Determination Letter" if HCD concurs with the agency that the proposed transaction is consistent with the Act.
- Issue a "Findings Letter" if HCD believes the transaction may violate the Act.
- After reviewing an agency's response to a Findings Letter, issue either a Determination Letter (if HCD has been convinced that the transaction actually does comply with the Act) or a Notice of Violation (if HCD still believes the transaction violates the Act and the agency apparently intends to proceed anyway).

The new HCD review process also adds two new requirements for agencies.

Specifically:

- If an agency receives a Findings Letter from HCD, the agency must either correct the identified issues, prepare a response regarding how the agency will correct the issues, and/or provide written findings disputing the Findings Letter.
- If an agency receives a Notice of Violation from HCD, the agency must hold an open public meeting to review the Notice of Violation. In addition to all legally required public meeting noticing requirements, the agency must also

> post the public notice to the agency's website (if applicable), post the notice in a conspicuous public place in the agency's office, and send the public notice to HCD via the Surplus Land Act Portal no later than the time of posting required by the Brown Act (commencing with Government Code section 54950). An agency is not required to disclose information conducted during closed sessions at this meeting.

Practically, HCD's review process and an agency's response likely will not change all that much under the Final Updated Guidelines, as HCD and agencies typically engaged in this sort of back and forth under the 2021 Guidelines. However, the requirement that an agency hold a public meeting to review a Notice of Violation is a significant new addition. While many agencies may have already been agendizing Notices of Violation in one way or another, *requiring* agencies to do so arguably exceeds HCD's authority and improperly hinders agency discretion.

Private Right of Enforcement

Prior to the New Legislation, both the Act and the 2021 Guidelines provided for a private right of enforcement, but the Final Updated Guidelines further define this right and make it more clear. For example, public or private entities wishing to bring an action to enforce the Act against an agency now must submit a "Notice of Alleged Violation" to the agency and HCD 60 days prior to commencing the action. Additionally, if a public or private entity issues a Notice of Alleged Violation, HCD can essentially skip the "Findings Letter" step of the HCD process and instead jump straight to issuing a Notice of Violation (assuming HCD agrees with the Notice of Alleged Violation). Although, neither of these steps is a major change from the 2021 Guidelines, but they do formalize the process.

Penalties

Consistent with the New Legislation, the Final Updated Guidelines also include minor updates to the penalty provisions, including explaining how to calculate a property's "disposition value" for purpose of calculating penalties and authorizing agencies to elect for penalties to be deposited into the Building Homes and Jobs Trust (rather than the agency's local housing trust fund), if the agency so elects.

While the Final Updated Guidelines provide clarity in some instances, they also add new complexities and challenges in others. How the Final Updated Guidelines will interplay with an agency's disposition is an extremely fact specific analysis that hinges on both the type of agency as well as the unique facts of the contemplated disposition. Agencies should review the Final Updated Guidelines and consider how the same may impact their surplus property plans moving forward.

Updated Surplus Land Act Guidelines ~~FINAL~~

Final

(Modified)

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Updated Surplus Land Act Guidelines

OVERVIEW

Article I summarizes the purpose and scope of the Surplus Land Act (SLA) by identifying the objectives of ~~the~~these Guidelines and defining key terms within the law. This section also defines lands exempt from the provisions of the SLA.

Article II describes the mechanisms for identifying and disposing of surplus lands. This Article also describes requirements for developments built upon disposed surplus land, surplus land in which no sale took place under the auspices of the SLA, and requirements for affordable housing on surplus land that is developed at a later date.

Article III identifies the affordable housing requirements for developments built upon disposed surplus land.

Article IV summarizes the notification, recording, and reporting requirements to the California Department of Housing and Community Development (HCD) under the SLA.

Article V explains HCD's obligations to monitor local agency compliance with the SLA and identifies the escalating penalties associated with noncompliance.

Updated Surplus Land Act Guidelines

ARTICLE I. PROGRAM OVERVIEW

Assembly Bill (AB) 1486 (Statutes of 2019, Chapter 664) and AB 1255 (Statutes of 2019, Chapter 661) made changes to the SLA found in **Government Code, Title 5, Division 2, Part 1, Chapter 5, Article 8. Surplus Land.** Generally, the purpose of the amendments is to promote affordable housing development on ~~unused or underutilized public~~surplus land throughout the state to respond to the existing affordable housing crisis. The amendments to the SLA adopted with AB 1486 and AB 1255 clarify and strengthen reporting and enforcement provisions of the SLA to promote increased compliance with the SLA. Moreover, some of the changes in these updated Guidelines are the result of subsequently enacted legislation.

AB 1486 took effect on January 1, 2020.

As of that date, HCD began reviewing notices that local agencies are required to send by email or certified mail pursuant to Government Code ~~Section~~section 54222(a)(1) and examining complaints and other information received or requested to confirm compliance with the SLA pursuant to Government Code ~~Section~~section 65585.1. As of that date, HCD also began collecting (in Table G of the Housing Element Annual Progress Report (APR)) information on ~~jurisdiction- owned~~jurisdiction-owned sites identified in the housing element sites inventory, and subsequently disposed of by the jurisdiction.

As of January 1, 2021, HCD was required to begin implementing Government Code ~~Section~~section 54230.5, including, but not limited to, adopting these Guidelines; reviewing each local agency's description of the notices of availability sent, description of negotiations conducted with any responding entities, and copies of any restrictions to be recorded against the property pursuant to Government Code ~~Sections~~sections 54233 or 54233.5; submitting written findings to local agencies; and, if necessary, assessing penalties, in conjunction with the Attorney General, to local agencies that dispose of surplus property in violation of the SLA.

Note: Authority cited: Government Code ~~Section~~section 54230, subdivision (c), ~~Section~~section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code ~~Section~~section 54222, ~~Section~~section 54230, ~~Section~~section 54230.5, subdivision (b)(2)(A), ~~Section~~section 54233, ~~Section~~section 54233, ~~Section~~section 54233.5, ~~Section~~section 65585.1.

Section 100. Applicability

These updated SLA Guidelines (hereinafter "Guidelines") apply on or after the date adopted as shown on the cover page. The application of these updated Guidelines to the disposition of surplus land shall be determined by the date of issuance of the Notice of Availability (NOA). The applicability of these updated Guidelines to exempt determinations shall be determined by the date that the property was declared exempt surplus land. Regardless of when Guidelines were adopted, the Surplus Land Act as amended is applicable to local agencies upon the date amendments went into effect.

Section 101. Guidelines

(a) These SLA Guidelines ~~(hereinafter "Guidelines")~~ implement, interpret, and make specific the text of the SLA. The forms linked in the Appendices of these Guidelines may be updated from time to time upon approval by the Director of HCD or the Director's designee.

Updated Surplus Land Act Guidelines

(b) These guidelines establish and revise terms, conditions, forms, and procedures for the proper identification and disposition of various types of surplus land, as well as provide

detail on expectations and sanctions related to SLA compliance. Major actors and their responsibilities include, but are not limited to:

(1) Local agencies:

(A) Provide ~~notices of availability~~NOAs of surplus land for lease or purchase to local public entities and housing sponsors as required by Government Code ~~Section~~section 54222 on the form provided in Appendix A;

(B) Where applicable, receive notices of interest from entities desiring to purchase or lease surplus land and negotiate with entities in good faith;

(C) Provide HCD with descriptions of the ~~notices of availability sent, and~~NOAs sent, proof of sending the NOA to the CalHFA-certified housing sponsor list and local public entities within whose jurisdiction the surplus land is located, and description of negotiations conducted with any responding entities~~,~~ regarding the

disposal of the ~~parcel of~~ surplus land on the form provided in Appendix B;

(D) Forward to HCD a copy of any restrictions recorded or to be recorded against the surplus land pursuant to Government Code ~~Section~~section 54233 or 54233.5, whichever is applicable, in the form prescribed by HCD in Appendix B; and

(E) If the local agency is a city or county, beginning April 1, 2021, the local agency must report annually information about all locally owned surplus land sites pursuant to Government Code ~~Section~~section 54230. Reporting shall be in table H of the Annual Progress Report (APR) in accordance with APR instructions.

(2) Housing sponsors, as defined by ~~Section~~section 50074 of the Health and Safety Code, may notify HCD of their interest in surplus land pursuant to Government Code ~~Section~~section 54222(a)(1) using the survey in Appendix D.

(3) HCD will maintain updates of interested housing sponsors and inventories of publicly owned surplus land and a list of ~~notices of availability~~NOAs.

Note: Authority cited: Government Code ~~Section~~section 54230, subdivision (c), ~~Section~~section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code ~~Section~~section 54221, ~~Section~~section 54222, ~~Section~~section 54230, ~~Section~~section 54230.5, subdivision (b)(2)(A), ~~Section~~section 54230.5, subdivision (b)(2)(D), ~~Section~~section 54233, ~~Section~~section 54233.5; Health and Safety Code ~~Section~~section 50074.

Section 102. Definitions

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the meanings of terms provided in the SLA and Article 10.6 of Government Code ~~Sections~~sections 65580 – 65589.11 (housing elements). For terms defined in statute, any changes to the statutory definition shall supersede the definition in these Guidelines.

(a) **"Affordable housing"** means housing available at affordable housing cost, as defined in ~~Section~~section 50052.5 of the Health and Safety Code, to lower-income

households, or affordable rent, as defined in ~~Section~~section 50053 of the Health and Safety Code, to ~~lower- income~~lower-income households, as defined in ~~Section~~section 50079.5 of the Health and Safety Code.

(b) **"Affordable housing cost"** means that for owner-occupied housing, the sales price ~~at~~ is restricted for a minimum of 45 years, and 50 years for housing located on tribal trust lands. The ~~which the~~ monthly ownership cost, including principal, interest, taxes, insurance, and utilities, equals:

(1) For extremely low-income households, the product of 30 percent times 30 percent of the area median income (AMI) adjusted for family size appropriate for the unit.

(2) For very low-income households, the product of 30 percent times 50 percent of the ~~area median income~~AMI adjusted for family size appropriate for the unit.

(3) For lower-income households whose gross incomes exceed the maximum income for very low-income households and does not exceed 70 percent of the ~~area median income~~AMI adjusted for family size, the product of 30 percent times 70 percent of the ~~area median income~~AMI adjusted for family size appropriate for the unit. In addition, for any lower-income household that has a gross income that equals or exceeds 70 percent of the ~~area median income~~AMI adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.

(4) For moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of ~~area median income~~AMI adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the ~~area median income~~AMI adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35 percent of the gross income of the household.

(c) "**Affordable rent"** means that~~, including~~ for rental housing, the rent is restricted for a minimum of 55 years, and 50 years for housing located on tribal trust lands. Including a reasonable utility allowance, rent shall not exceed:

(1) For extremely low-income households, the product of 30 percent times 30 percent of the ~~area median income~~AMI adjusted for family size appropriate for the unit.

(2) For very low-income households, the product of 30 percent times 50 percent of the ~~area median income~~AMI adjusted for family size appropriate for the unit.

(3) For ~~lower income~~lower-income households whose gross incomes exceed the maximum income for very low-income households, the product of 30 percent times 60 percent of the ~~area median income~~AMI adjusted for family size appropriate for the unit. In addition, for those lower-income households with gross incomes that exceed 60 percent of the ~~area median income~~AMI adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of the gross income of the household.

(4) For ~~moderate income~~moderate-income households, the product of 30 percent times 110 percent of the ~~area median income~~AMI adjusted for family size appropriate for the unit. In addition, for those moderate-income households whose gross incomes exceed 110 percent of the ~~area median income~~AMI adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of the gross income of the household.

~~(d) **"Agency's use".** Except as provided below, "agency's use" shall include, but not be limited to, land that is being used, or is planned to be used pursuant to a written plan adopted by the local agency's governing board for agency work or operations, including, but not limited to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants as described in Government Code Section 54221(c)(1).~~

~~(1) Agency's use shall not include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development. Property disposed of for the sole purpose of investment or generation of revenue shall not be considered necessary for the agency's use.~~

~~(2) In the case of a local agency that is a district, excepting those whose primary mission or purpose is to supply the public with a transportation system, "agency's use" may include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development, or be for the sole purpose of investment or generation of revenue if the agency's governing body takes action in a public meeting declaring that the use of the site will do one of the following:~~

~~(A) Directly further the express purpose of agency work or operations.~~

~~(B) Be expressly authorized by a statute governing the local agency, provided the district complies with Government Code Section 54233.5 where applicable.~~

(~~e~~d) **"APR"** means the Annual Progress Report from each city or county detailing the agency's implementation of the housing element of its general plan submitted to and using forms and definitions adopted by HCD.

(~~f~~e) **"Assisted unit"** means a unit that is subject to rent and/or occupancy restrictions, as a result of financial assistance, as specified in a regulatory agreement.

(~~g~~f) **"CalHFA"** means the California Housing Finance Agency.

(g) "**Description of negotiations**" means a written summary of the negotiations that occurred between the local agency and each entity which responded to an NOA. The written summary must be accompanied by copies of written correspondence (e.g., emails, letters, etc.) that include, if applicable, (1) the respondent's interest in the surplus land, (2) the local agency's request for additional information from the respondent, (3) any responses to such requests, (4) a description of any significant changes proposed by the respondent, (5) confirmation from the local agency to the respondent indicating negotiations have concluded, and (6) if applicable, a copy of the draft Purchase and Sale Agreement, Disposition and Development Agreement, Lease Agreement or Exclusive Negotiating Agreement. This information shall be provided to HCD in a form prescribed by HCD in Appendix B.

(h) **"Determination Letter"** is a letter that HCD sends to a local agency when HCD finds that the local agency has corrected all issues identified by HCD in a Findings Letter or if HCD concurs that the local agency's process for disposing of surplus land complies with the SLA.

(~~h~~i) "**Disposition of surplus land.**" ~~means the sale or lease of local agency-owned land formally declared surplus.~~

(1) Disposition means:

Updated Surplus Land Act Guidelines

(c) The sale of surplus land, including land exchanged for necessary for nonmonetary consideration.

(B) The entering of a lease for surplus land for a term longer than 15 years, inclusive of any extension or renewal options included in the terms of the initial lease, entered into on or after January 1, 2024. A lease with a term of 15 years or less that includes an option to extend or renew is a disposition if the sum of the term of the original lease and the extension or renewal is greater than 15 years. A lease that is for a term of 15 years or less that includes an option to purchase is considered a disposition of surplus land at the time the lease is executed.

(2) Disposition does not mean:

(A) The entering of a lease for surplus land for a term of 15 years or less, inclusive of any extension or renewal options included in the terms of the initial lease.

(B) The entering of a lease for surplus land on which no development or demolition will occur, regardless of the term of the lease.

(~~1~~i) For the 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.~~section, development means the process of changing the character of the land from its existing condition to a more useable condition by constructing or placing a building or buildings on the land, preparing the land for such construction, or reusing an existing building for a purpose other than the purpose for which it was originally built or designed.

(ii) For the purposes of this section, demolition means the deliberate dismantling, destruction, or removal of an entire building or significant portions of a building, rendering it unfit for use.

(iii) Development and demolition do not include making improvements, renovations, or updates to an existing building, while preserving its structural integrity, or replacing an existing building that has reached the end of its structural life with a building that will be used for the same purpose.

(~~2~~3) If a local agency is unsure whether a transaction involving local ~~agency owned~~agency-owned land meets this definition, they are encouraged to seek

additional guidance from HCD via the Surplus ~~Lands~~Land Act Portal. ~~Prior to September 6, 2023, submissions were accepted at PublicLands@hcd.ca.gov.~~

(j) **"Disposition and Development Agreement (DDA)"** means an agreement between a developer and a local agency that binds the developer to construct a specific development

and the local agency to dispose of the property to the developer if permits and other entitlements for the project are obtained and other applicable conditions are met.

(k) "District" includes all districts within the state, including, but not limited to, all special districts, sewer, water, utility, and local and regional park districts, and any other political subdivision of the state that is a district. The California State Controller provides information about districts at https://districts.bythenumbers.sco.ca.gov/#!/year/default.

(j) **"Exclusive Negotiating Agreement (ENA)"** means a legally binding agreement that binds a prospective buyer and seller under which the seller cannot make any

~~similar deals with other potential buyers for a specified period.~~

(l) **"Exclusive Negotiating Agreement (ENA)"** means a legally binding agreement that binds a prospective buyer and seller under which the seller cannot negotiate with, entertain offers from, or make any similar deals with other potential buyers for a specified period regarding a particular property.

(~~k~~m) **"Expression-of-interest list"** means the list maintained by HCD on its website of developers that have notified HCD of their interest in purchasing or leasing surplus property.

(~~l~~n) **"Fair market value"** is the price a particular parcel would sell for on the open market when certain conditions are met. Those conditions are: (1) the parties involved ~~areaware~~are aware of all the facts, (2) are acting in their own interest, (3) are free of any pressure to buy or sell, and (4) have ample time to make the decision. In cases where fair market value has not been established, the parties may seek a broker's opinion of value, or an appraisal may be conducted. If, following a single appraisal, consensus on fair market value remains absent, a second appraisal is frequently obtained. If consensus on fair market value is not reached after the second appraisal, the parties may average the results of the two appraisals, or a third appraisal may be obtained. Nothing in these Guidelines prevents a local agency from selling or leasing surplus land for fair market value or fair market rent or less than fair market value or fair market rent.

(o) **"Findings Letter"** is the initial letter HCD sends to a local agency informing the local agency whether it is potentially in violation of the SLA. A local agency may respond to a Findings Letter that notifies the local agency of potential violations by either providing evidence and arguments it is not in violation of the SLA or by providing a plan to cure and correct the violations identified in the Findings Letter.

(~~m~~p) **"Good faith negotiation"** means to deal honestly and fairly with the other party throughout the negotiation process whether or not the negotiation results in a contract. For specific documentation requirements, see Section 202(a).

(~~n~~q) **"HCD"** means the California Department of Housing and Community Development.

(~~o~~r) **"Housing sponsor"** means any individual, joint venture, partnership, limited partnership, trust, corporation, limited equity housing cooperative, cooperative, local public entity, duly constituted governing body of an Indian reservation or rancheria, tribally designated housing entity, or other legal entity, or any combination thereof, certified by CalHFA pursuant to rules and regulations of CalHFA as qualified to either own, construct, acquire, or rehabilitate a housing development, whether for profit, nonprofit, or organized for limited profit, and subject to the regulatory powers of CalHFA pursuant to rules and regulations of CalHFA and other specified terms and conditions. A developer can become a self-certified housing sponsor in accordance with CalHFA's procedures on the form as provided at https://www.calhfa.ca.gov/apps/HSC. "Housing sponsor" includes persons and families of low or moderate income who are approved by CalHFA as eligible to own and occupy a housing development and individuals and legal entities receiving property improvement loans through CalHFA.

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(ee) "**Local agency**" means every city, whether organized under general law or by charter,

county, city and county, district, including school, sewer, water, utility, and local and regional park districts of any kind or class, joint powers authority, successor agency to a former redevelopment agency, housing authority, or other political subdivision of this state and any instrumentality thereof that is empowered to acquire and hold real property.

(t) **"Local Public Entity"** means any county, city, city and county, the duly constituted governing body of an Indian reservation or rancheria, tribally designated housing entity as defined in Section 4103 of Title 25 of the United States Code and Section 50104.6.5, redevelopment agency organized pursuant to Part 1 (commencing with Section 33000) of Division 24, or housing authority organized pursuant to Part 2 (commencing with Section 34200) of Division 24, and also includes any state agency, public district, or other political subdivision of the state, and any instrumentality thereof, that is authorized to engage in or assist in the development or operation of housing for persons and families of low or moderate income. "Local public entity" also includes two or more local public entities acting jointly.

(~~q~~u) **"Lower-income households**" means persons and families whose income does not exceed the qualifying limits for lower-income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by HCD pursuant to section 50093 of the Health and Safety Code. Lower-income households includes very low-income households, as defined in Health and Safety Code ~~Section~~section 50105, and extremely low-income households, as defined in Health and Safety Code ~~Section 50106.~~section 50106. The income limits published by HCD can be found at https://www.hcd.ca.gov/grants-and-funding/income-limits.

(v) **"Notice of Alleged Violation"** is a written communication sent to a local agency (with a copy to HCD) by a public (not HCD) or private entity alleging violations of the SLA.

(w) **"Notice of Violation (NOV)"** is a letter sent by HCD to a local agency after a Findings Letter has been sent, informing the local agency it is in violation of the SLA and the local agency may be subject to further enforcement if the local agency does not cure or correct the violations within 60 days, including but not limited to referral to the California Office of the Attorney General and financial penalties.

(~~r~~x) **"Open-space purposes**" means the use of land for public recreation, enjoyment of

scenic beauty, or conservation or use of natural resources.

(~~s~~y) **"Option to lease"** means a contract by which a local agency enters an agreement with another entity to allow the latter to lease surplus land at a specified rate for a specified term, or within a reasonable time in the future, but without imposing an obligation to lease upon the option holder.

(~~t~~z) **"Option to purchase"** means a contract by which a local agency enters an agreement with another entity to allow the latter to purchase surplus land at a specified price, or within a reasonable time in the future, but without imposing an obligation to purchase upon the option holder.

(~~u~~aa) **"Persons and families of low or moderate income**" means persons and families whose income does not exceed 120 percent of ~~area median income~~AMI adjusted for family size by HCD in accordance

with adjustment factors adopted and amended from time to time by the ~~United States~~U.S. Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. The income limits published by HCD can be found at https://www.hcd.ca.gov/grants-and-funding/income-limits.

(~~v~~bb) **"Planning period"** means the time period between the due date for an agency's preparation or update of its housing element and the due date for the next housing element according to the applicable schedule described in paragraphs (2) and (3) of subdivision (e) of Government Code ~~Section~~section 65588. Generally, the "Planning period" is eight years.

(~~w~~cc) **"RHNA"** means the Regional Housing Needs Allocation to be developed by HCD in consultation with each council of governments, where appropriate, which shall determine the existing and projected need for housing for each region.

(~~x~~dd) **"Surplus land"** means land owned in fee simple for which a local agency's governing body takes formal action at a regular public meeting declaring land to be surplus and not necessary for a local agency's use (as defined in section 104 of these Guidelines). Land must be declared either "surplus" or "exempt surplus" as supported by written findings before a local agency may take any action to dispose of it consistent with an agency's policies or procedures. A local agency, on an annual basis, may declare multiple parcels as "surplus" or "exempt surplus."

(~~y~~ee) ~~"~~ "**Transitional housing**~~"~~" means a rental housing development operating under programmatic constraints that ~~requires~~require the termination of assistance after a specified time or event, in no case less than six months after initial occupancy, and the re-renting of the assisted unit to another eligible participant.

(~~z~~ff) **"Unit"** means a residential unit that is used as a primary residence by its occupants, consistent with the definition of a unit as ~~utilizedby the US~~utilized by the United States Census Bureau and the California Department of Finance, including efficiency units, residential hotel units, and units used as transitional housing.

Note: Authority cited: Government Code ~~Section~~section 54230, subdivision (c), ~~Section~~section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code ~~Section~~section 54221, ~~Section~~section 54222, ~~Section~~section 54222.5, ~~Section~~section 54223, ~~Section~~section 54226, ~~Section~~section 54230, ~~Section~~section 54230.5, ~~Section~~section 54233, ~~Section~~section 54233.5, ~~Section~~section 54234, ~~Section~~section 65400, ~~Sections~~sections 65580 – 65589.11; Health and Safety Code ~~Section~~section 50052.5, ~~Section~~section 50053, ~~Section~~section 50074, ~~Section~~section 50079.5, section 50093;

Public Resources Code, Division 13 (~~Section~~section 21000 et seq.).

Section 103. Exemptions

(a) These Guidelines apply to the disposal of all surplus ~~lands.~~land and exempt surplus land, as defined in Government Code section 54221. However, exempt surplus land is not subject to Articles II and III of these Guidelines.

(b) Surplus land that meets one or more of the following conditions ~~is exempt from~~in this subsection is not subject to Articles II and III of these Guidelines~~:~~

, but ~~(1) An ENA or legally binding agreement to dispose of property that meets the requirements of Government Code Section 54234 is not~~is still subject to the ~~requirements of AB 1486 and must comply with~~provisions of the SLA as it existed on December 31, 2019~~.~~:

(1) Land for which the local agency entered into an ENA or legally binding agreement to dispose of property as of September 30, 2019, provided the disposition is completed by December 31, 2027.

(~~A~~2) ~~Surplus land subject to~~Land related to the Metro North Hollywood Joint Development Project for which the local agency entered into an ENA or legally binding agreement to dispose of ~~property is not subject to Articles II and III of these Guidelines so long as the local agency entered into the ENA or legally binding agreement on or before~~the property as of September 30, 2019, and the disposition of the property to the party that had entered into such an agreement, or its successors or assigns, is completed by December 31, ~~2022~~2027.

(3) Land for which the local agency has, by September 30, 2019, issued a competitive request for proposals (RFP) for the development of property that includes at least 100 residential units with at least 25 percent of the total residential units restricted to lower-income households with an affordable housing cost or affordable rent for a minimum of 55 years for rental housing, 45 years for ownership housing and 50 years for rental or ownership housing located on tribal trust lands; and the local agency enters into a disposition and development agreement (DDA) by December 31, 2027.

(A) A joint development involving multiple parcels for which the local agency has issued a single competitive RFP by September 30, 2019, is exempt from Articles II and III of these Guidelines so long as the joint development meets all the other requirements in paragraph (3) above.

(B) ~~The disposal of any surplus land pursuant to a qualifying ENA or legally binding agreement to dispose of property must still comply with the SLA as it existed on December 31, 2019.~~Paragraph (3) above does not apply to land held in the Community Redevelopment Property Trust Fund pursuant to section 34191.4 of the Health and Safety Code, or that has been designated in a long-range property management plan pursuant to section 34191.5 of the Health and Safety Code.

(~~C~~4) The deadline for disposal of property set out in ~~Paragraph (A~~paragraphs (1), (2), and (3) above shall be extended if the disposition of the property, the local agency's right or ability to dispose of the property, or a development project for which such property is proposed to be transferred~~,~~ is the subject of judicial challenge~~,~~ by petition for writ of mandate, complaint for declaratory relief or otherwise~~, to the date that is~~. Such extension shall be six months following the ~~final~~ conclusion of such litigation.

~~(D) If a legally binding agreement to dispose of property is either an enforceable option to lease or option to purchase and the option is exercised or expires after December 31, 2022, the local agency must notify HCD, in writing, within 30 days of the option's execution or the option's expiration.~~

(~~2~~5) Land held in the Community Redevelopment Property Trust Fund or designated in a long-range property management plan ~~is not subject to the requirements of these Guidelines if both~~, provided the disposition of the property meets one of the following ~~apply~~:

(A) ~~An~~Land for which the local agency entered into an ENA or legally binding agreement ~~for disposition~~to dispose of the property ~~is entered into not later than~~as of December 31, 2020, and the disposition of the property to the party that had entered into such agreement, or its successors or assigns, was completed by December 31, 2027.

~~(B) The disposition is completed by December 31, 2022.~~

(~~C~~B) The deadline for disposal of the property set out in ~~Paragraph (B~~paragraphs (5) and (5)(A) above shall be extended if the land subject to the Community Redevelopment

Property Trust Fund or the long-range property management plan is the

subject of litigation, including, but not limited to, litigation challenging the disposition of such property, the right or ability to dispose of the property, or a development project for which such property is proposed to be transferred~~, the date specified in Paragraph (B)~~. Such extension shall be ~~extended to the date that is~~ six months following the ~~final~~ conclusion of such litigation.

(6) HCD has no authority to waive or amend the statutory deadlines specified in paragraphs (1)-(5) above.

(7) Reviving Terminated Agreements. If a local agency failed to qualify for one of the grandfathering provisions found in a prior version of Government Code section 54234 because the final disposition of surplus land proposed for sale in an ENA, DDA, or other legally binding agreement was not completed before a prior statutory deadline (generally December 31, 2022), a local agency may seek, at its sole reasonable discretion, to revive the previous ENA, DDA, or legally binding agreement along substantially similar terms and qualify for the new December 31, 2027, deadline established in statute.

(~~3~~c) Land declared to be exempt surplus land by the local agency. ~~Other land may be exempt from these Guidelines provided that~~With the exception of the exemptions identified in 103(c)(1) below, the governing board of a local agency ~~declares~~must declare the property to be "exempt surplus land" at a regular public meeting and the declaration ~~is~~must be supported by written findings demonstrating that the land is of one or more of the following types:

~~(A) County or City Surplus Land Transferred for the Development of Affordable Housing with restrictions as described in Government Code Section 25539.4 or 37364.~~

(1) For exempt surplus land identified in Government Code section 54221(f)(1)(A), (B), (E), (K), (L), or (Q), a local agency may, instead, elect to identify the land in a public notice that is published by the local agency and available for public comment. Notice must also be provided to the entities identified in Section 201(a) of these Guidelines. The local agency must provide notice at least 30 days before the exemption takes effect.

(2) City- and County-Owned Land for Affordable Housing. County-owned surplus land transferred for the development of affordable housing must meet the requirements of Government Code section 25539.4. City-owned surplus land transferred for the development of affordable housing must meet the requirements of Government Code section 37364.

(A) Local agencies must, once a developer has been selected, submit to HCD a DDA, ENA or lease that confirms the requirements of Government Code section 54221(f)(1)(A) have been met.

(~~B~~3) Small Surplus Land Parcels ~~sold to an owner of contiguous land~~. Land that is:

~~(i) less than 5,000 square feet in area;~~

~~(ii) less than the minimum legal residential building lot size for the jurisdiction in which the parcel is located, or 5,000 square feet in area, whichever is less; or~~

(~~iii~~) ~~has no record access, is less than 10,000~~A) Less than one-half acre in area (21,780 square feet~~ in area,~~) and is not contiguous to land owned by a state or local agency that is used for open-space or low- and ~~moderate income~~moderate-income housing purposes.

(i) For the purposes of these Guidelines, each parcel of land shall be considered a distinct unit of exempt surplus land, except that contiguous parcels that are disposed of simultaneously to the same receiving entity,

or any entity working in concert with another receiving entity, shall be treated as a single unit of land.

(~~C~~4) Exchange of Surplus Land. Surplus land that a local agency is exchanging for another property or easement necessary for the local agency's use.

(~~D~~5) Local Agency to Agency Surplus Land Transfer. ~~Local agency surplus~~Surplus land that is transferred to another local, state, ~~or~~ federal agency, or federally recognized California Indian tribe for the transferee agency's use. Surplus land may also be transferred to a third party intermediary if that third party agrees to make no change in use to the property, and the third party acquires the land through a legally binding document that clearly binds the receiving local agency to use the property for the receiving agency's use and includes a date for eventual transfer of the property to the receiving agency within a reasonable time period.

(~~E~~6) Surplus Street Land. Surplus land that is a former street, right of way, or easement, and is conveyed to an owner of an adjacent property.

~~(F) Exempt Surplus Land for Affordable Housing. Land declared "exempt surplus land" that is advertised to all entities identified in subdivision (a) of Section 54222 of the Government Code and who are then invited to participate in the competitive bid process for either of the purposes identified below:~~

(7) Mixed-Use Developments for Affordable Housing. Land disposed for any of the purposes identified below:

(~~i~~A) A housing development (including mixed-use developments with ancillary commercial ground floor uses) that restricts 100 percent of the residential units to persons and families of low or moderate income, with at least 75 percent of the residential units restricted to

lower-income households as affordable housing pursuant to ~~Section~~section 102(a) of these Guidelines. In no event shall the maximum affordable sales price or rent level be higher than 20 percent below the median market rents or sales prices for the neighborhood in which the site is located. The requirements of Section 102(a) shall be contained in a covenant or restriction recorded against the surplus land at the time of sale that shall run with the land and be enforceable against any owner who violates the covenant or restriction and each successor in interest who continues the violation.

(i) For purposes of this subsection, neighborhood means the zip code in which the site is located. A local agency disposing of land for housing development pursuant to (i) above may use the most recent median market rents and sales price data for the zip code in which the site is located to calculate the affordable sales price and rent level of restricted units.

(~~ii~~B) A mixed-use development on surplus land that is more than one acre ~~in area, that includes~~but less than 10 acres in area. The land may be a single parcel or multiple adjacent or non-adjacent parcels. The development must include not less than 300 ~~housing~~residential units~~,~~ and ~~that restricts~~restrict at least 25 percent of the residential units to lower-income households~~, as defined in Health and Safety Code Section 50079.5~~ as affordable housing pursuant to ~~Section~~section 102(a) of these Guidelines. The requirements of Section 102(a) shall be contained in a covenant or restriction recorded against the surplus land at the time of sale that shall run with the land and be enforceable against any owner who

~~(iii) If used for one of the purposes described in Section 103(a)(3)(F)(i) and (ii) of these Guidelines, the local agency must put the land out for open, competitive bid. All entities identified in Section 202 must be invited to participate in the competitive bid process. If entities were invited to participate in the competitive bid process prior to the existence of HCD's expression-of-interest list, then noticing will be considered sufficient if reasonable efforts were made to include known interested parties.~~

~~(G) Validly Restricted Surplus Land. Surplus land that is subject to valid legal restrictions not imposed by the local agency such as covenants, or other restrictions that are and that would make housing prohibited, unless there is a feasible method to satisfactorily mitigate or avoid the prohibition on the site. An existing nonresidential land use designation is not per se a legal restriction that would make housing prohibited.~~

~~(H) Surplus Trust Lands. Surplus land that was granted by the state in trust to a local agency or that was acquired by the local agency for trust purposes by purchase or exchange, and for which disposal of the land is authorized or required subject to conditions established by statute.~~

violates the covenant or restriction and each successor in interest who continues the violation.

(i) To qualify for this exemption, a local agency must either follow the local agency's open, competitive solicitation process or put the property out to an open, competitive bid in which all entities identified in Section 201(a) of these Guidelines are invited to participate.

(C) Surplus land totaling 10 or more acres, consisting of either a single parcel or two or more adjacent or non-adjacent parcels combined for disposition to one or more buyers pursuant to a plan or ordinance adopted by the legislative body of the local agency or to a state statute if all of the following conditions are met:

(i) The completed development will consist of the greater of either:

I. 300 or more residential units, or

II. A number of residential units equal to 10 times the number of acres of the surplus land (e.g., a 40-acre development requires 400 residential units) or 10,000 residential units, whichever is less.

(ii) A local agency must either follow their local agency's open, competitive solicitation process or put the property out to an open, competitive bid in which all entities identified in Section 201(a) of these Guidelines are invited to participate.

(iii) The development restricts at least 25 percent of the residential units to lower-income households as affordable housing pursuant to Section 102(a) of these Guidelines. The requirements of Section 102(a) shall be contained in a covenant or restriction recorded against the surplus land at the time of sale that shall run with the land and be enforceable against any owner who violates the covenant or restriction and each successor in interest who continues the violation.

(iv) In mixed-use developments, residential housing must be constructed concurrently with non-residential development. If nonresidential development (e.g., commercial development) is included in the development, at least 25 percent of the total planned affordable units shall be made available for lease or sale and permitted for use and occupancy before or at the same time as at least 25 percent of nonresidential development is made available for lease or sale and permitted for use and occupancy.

I. Percent of nonresidential development is measured by computing the total square footage of the commercial component of the development, as identified in the final DDA, and multiplied by .25.

(v) Any violation of this Section 103(c)(7)(C) is subject to the penalties

described in Government Code section 54230.5. A local agency shall only dispose of land pursuant to this subsection through a disposition and development agreement that includes an indemnification clause that provides that if an action occurs after disposition that violates this subsection, the person or entity that acquired the property shall be liable for the penalties.

(D) A mixed-use development in rural areas of California, consisting of one or more parcels, that meets all the following conditions:

(i) The development restricts at least 25 percent of the residential units to lower-income households as affordable housing pursuant to Section 102(a) of these Guidelines. The requirements of Section 102(a) shall be contained in a covenant or restriction recorded against the surplus land at the time of sale that shall run with the land and be enforceable against any owner who violates the covenant or restriction and each successor in interest who continues the violation.

(ii) At least 50 percent of the square footage of the new construction is designated for residential use.

(iii) The development is not located in an urbanized area, as defined in Section 21094.5 of the Public Resources Code, which defines "urban" as either an incorporated city or an unincorporated area that is completely surrounded by one or more incorporated cities that meets both of the following criteria:

I. The sum of the population of the unincorporated area and the population of the surrounding incorporated cities is 100,000 or more.

II. The population density of the unincorporated area is equal to, or greater than, the population density of the surrounding cities.

(E) Where the surplus land consists of more than one parcel or is one parcel that will be subdivided into multiple contiguous parcels, and the parcel(s) are eligible for one of the exemptions under Section 103(c)(7)(A)-(D), the land can be treated as one parcel by a master developer. In addition, the affordable residential units must be constructed and completed not later than the unrestricted units and non-residential portion of the development. If the mixed-use development occurs in phases, the affordability requirement must be met in each phase.

(8) Land Subject to Valid Legal Restrictions. For land to qualify for this exemption, a local agency must establish that the surplus land is subject to a legal restriction pursuant to section (A) below and meets the following criteria: 1) the restriction was not imposed by the local agency, 2) the restriction makes housing a prohibited use, and 3) there is no feasible method to mitigate or avoid the prohibition of housing on the site.

(A) So long as the land meets all the criteria in this Section 103(c)(8), above, valid legal restrictions include, but are not limited to, the following:

(i) Existing contracts, including leases, agreed to prior to September 30, 2019.

(ii) Easements.

(iii) Source of Funding Restrictions. Restrictions imposed by the source of funding that a local agency used to purchase a property, provided that both of the following requirements are met:

I. The restrictions require the funds be spent only on non-housing purposes.

II. The proposed disposal of the land is consistent with the requirements imposed by the funding constraints.

(iv) Other valid legal restrictions may also include federal or state statutes or regulations.

(B) Avalid legal restriction shall be supported by documentary evidence establishing the valid legal restriction. Such evidence includes, but is not limited to, the following:

(i) Copies of contracts, leases, public or private grant deeds, easements, or federal or state statutes or regulations.

(ii) A written explanation describing how the legal restriction meets the criteria in section 103(c)(8).

(iii) It is not necessary for a local agency to acquire additional property rights or property interests belonging to third parties in order to attempt to mitigate housing prohibitions.

(C) Valid Legal Restrictions do not include the following:

(i) Existing nonresidential land use designations.

(ii) Covenants, restrictions, or other conditions on the property rendered void and unenforceable by any other law, including, but not limited to, Section 714.6 of the Civil Code.

(9) Surplus Trust Lands. Surplus land that was granted by the state in trust to a local agency or that was acquired by the local agency for trust purposes by purchase or exchange, and for which disposal of the land is authorized or required subject to conditions established by statute.

(A) A list of state granted trust lands may be found on the State Lands Commission website: https://www.slc.ca.gov/granted_lands/.

(B) A declaration of surplus trust land exempted pursuant to this subdivision must be supported by written findings that the land was granted by the state in trust or acquired by the local agency for trust purposes. The written findings must include the governing statute that sets the conditions for disposal of the trust land.

(~~I~~) 10) School District Surplus Land. Land that is subject to Education Code ~~Sections~~sections 17388, 17515, 17536, 81192, 81397, 81399, 81420, ~~and~~or 81422 of the Education Code and Part 14 of Division 31 of the Health and Safety Code commencing with Health and Safety Code ~~Section~~section 53570, unless compliance with the SLA is expressly required.

(~~J~~11) Real property that is used by a district for agency's use expressly authorized in Government Code ~~Section~~section 54221(c).

(~~K~~) 12) Transfers of Surplus Parking Lot Land. Surplus parking lot land that has been transferred before June 30, 2019, by the state to a local agency pursuant to Streets and Highways Code ~~Section~~section 32667 and has a minimum planned residential density of at least 100 dwelling units per acre and includes 100 or more residential units that are restricted to persons and families of low or moderate income pursuant to ~~Government Code~~ Section ~~54221~~102(~~f~~a)~~(1)(K)~~ of these Guidelines.

(13) Surplus land disposed of by a local educational agency, as defined by and pursuant to Government Code section 65914.7 (effective January 1, 2024).

(14) Surplus land that is a former military base that was conveyed by the federal government to a local agency and is subject to Article 8 (commencing with section 33492.125) of Chapter 4.5 of Part 1 of Division 24 of the Health and Safety Code, provided that all of the following conditions are met:

(A) The former military base has an aggregate area greater than five acres, is expected to include a mix of residential and nonresidential uses and is expected to include no fewer than 1,400 residential units upon completion of development or redevelopment of the former military base.

(B) The affordability requirements for residential units shall be governed by a settlement agreement entered into prior to September 1, 2020. Furthermore, at least 25 percent of the initial 1,400 residential units developed shall be restricted to lower-income households, as defined in section 50079.5 of the Health and Safety Code, with an affordable sales price or an affordable rent, as defined in sections 50052.5 and 50053 of the Health and Safety Code. Rental housing must be restricted for a minimum of 55 years; for-sale housing must be restricted for a minimum of 45 years; and rental or ownership housing located on tribal trust lands must be restricted for a minimum of 50 years.

(C) Prior to the disposition of the surplus land, the recipient has negotiated a project labor agreement consistent with the local agency's project stabilization agreement resolution, as adopted on February 2, 2021, and any succeeding ordinance, resolution, or policy, regardless of the length of the agreement between the local agency and the recipient.

(D) The agency includes in the annual report required by Government Code section 65400(a)(2) the status of development of residential units on the former military base, including the total number of residential units that have been permitted and what percentage of those residential units are restricted for persons and families of low or moderate income, as defined in section 50093 of the Health and Safety Code, or lower-income households, as defined in section 50079.5 of the Health and Safety Code.

(15) Sectional Planning Areas. Land subject to Government Code section 54221(f)(1)(P). HCD may request additional information to confirm land is eligible for the exemption.

(16) Surplus Land at Airport Facilities. Land that is owned by a California public-use airport in which residential housing is prohibited by Federal Aviation Administration (FAA) rules, grant deeds, or grant assurances. It is the responsibility of the local agency to identify the specific FAA rule, grant deed or grant assurance that prohibits housing.

(17) Land Transferred to a Community Land Trust. Land that is sold, leased, or transferred to a community land trust that meets all the following requirements:

(A) The land is, or will be, developed or rehabilitated for the purposes of housing.

(B) The housing that will be developed or rehabilitated will be occupied by low or moderate-income households as defined in Section 50093 of the Health and Safety Code for owner-occupied units or occupied by low-income households as defined in Section 50079.5 of the Health and Safety Code for rental units.

(C) The affordability requirements identified above shall be contained in a covenant, deed restriction, or equity sharing agreement pursuant to paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code for owner-occupied units or pursuant to paragraph (2)(A) of subdivision (g) of Section 214 of the Revenue and Taxation Code for rental units, and recorded against the surplus land no later than January 1 of the year following the sale, that shall run with the land and be enforceable against any owner who violates the covenant or restriction and each successor in interest who continues the violation. A copy of the covenant or restriction shall be provided to the County Assessor.

(18) Mixed-use developments by Transportation Districts.

(A) Land owned by local agencies whose primary mission or purpose is to supply the public with transportation may be used to develop projects for

commercial or industrial uses, including nongovernmental retail, entertainment, or office

development or for the sole purpose of investment or generation of revenue, if the agency meets all the following criteria:

(i) The agency has an adopted land use plan or policy that designates at least 50 percent of the gross acreage covered by the adopted land use plan or policy for residential purposes and that plan proposes to develop the greater of either at least 300 residential units or at least 10 residential units per gross acre, averaged across all land covered by the land use plan or policy. Land use plans or policies include but are not limited to an adopted land use plan, land use program, joint development policy, transit-oriented development policy, or other similar policy.

(ii) The agency's adopted land use plan or policy requires that at least 25 percent of all residential units to be developed on the parcels covered by the adopted land use plan or policy are affordable pursuant to Section 102(a) of these Guidelines.

(iii) While the agency is required to develop all the affordable units in the agency's adopted land use plan or policy, before the agency is permitted to dispose of land for non-housing purposes, the agency must have in place a legally binding agreement(s), entered into since January 1, 2020, to dispose of at least 25 percent of the land pursuant to subparagraph (ii).

(B) Land disposed of for residential purposes shall:

(i) Be put out subject to the local agency's open, competitive solicitation process or put out to open, competitive bid by the local agency, provided that all entities identified in Government Code section 54222, subdivision (a), are invited to participate.

(ii) Include the appropriate affordability covenants or restrictions recorded against the surplus land that will be used to meet the plan's affordability requirements. At least 25 percent of the residential units proposed in the entirety of the land use plan or policy, but not necessarily on individual parcels, must be affordable pursuant to Section 102(a) of these Guidelines.

(19) Land subject to Government Code section 54222.3.1. HCD may request additional information to confirm land is eligible for the exemption.

(d) If the surplus land is located in one of the four locations below, an NOA for open space purposes must be sent via email or certified mail to the entities identified in Government Code section 54222(b) and HCD before a local agency may dispose of the land pursuant to Section 103(c)(2)-(8) and (10)-(19) of these Guidelines.

(1) The land is located within a coastal zone.

(2) The land is adjacent to a historical unit of the State Parks System.

(3) The land is listed on, or determined by the State Office of Historic Preservation to be eligible for listing on, the National Register of Historic Places.

(4) The land is located within the Lake Tahoe region as defined in Government Code section 66905.5.

(~~c~~e) ~~No~~ Exemption Determination: Any determination by a local agency that its surplus lands are exempt from the SLA must be supported by written findings and documentation, which shall be provided to HCD pursuant to ~~Section~~section 400(e) of these Guidelines.

(f) Pursuant to section 201 of these Guidelines, prior to disposing of surplus land or participating in negotiations to dispose of surplus land with a prospective transferee, a local agency shall send a written NOA. However, "participating in negotiations" does not include any of the following:

(1) Issuing an RFP or RFQ to the entities identified in Government Code section 54222(a) for the purposes of meeting the affordable housing exemptions in Government Code section 54221(f)(1)(A), (F), (G), (H), and (I);

(2) Negotiating a lease, ENA, or option agreement for the purposes of meeting the affordable housing exemptions in Government Code section 54221(f)(1)(A), (F), (G), (H), and (I); or

(3) Negotiating with a developer to determine if the lease provisions of Government Code section 54221(d)(2) can be met.

Note: Authority cited: Government Code ~~Section~~section 54230, subdivision (c)(2), ~~Section~~section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code ~~Section~~section 54221, ~~Section~~section 54222, ~~Section~~section 54222.3, ~~Section~~section 54223, ~~Section~~section 54226, ~~Section~~section 54227, ~~Section~~section 54230, ~~Section~~section 54230.5, ~~Section~~section 54233, ~~Section~~section 54234, subdivisions (a)(2), (b)(1), (b)(2), ~~Section~~section 25539, ~~Section~~section 25539.4, ~~Section~~section 37364; Education Code ~~Section~~section 17388, ~~Section~~section 17515, ~~Section~~section 17536, ~~Section~~section 81192, ~~Section~~section 81397, ~~Section~~section 81399, ~~Section~~section 81420, and ~~Section~~section 81422; Health and Safety Code ~~Sections~~sections 53570 et seq.; Streets and Highways Code ~~Section~~section 32667.

Section 104. Agency's Use

(a) Except as provided below, "agency's use" shall include, but not be limited to, land that is being used for agency work or operations, land that a local agency plans to use for agency work or operations pursuant to a written plan adopted by the local agency's governing board, or land that is disposed of for agency work or operations.

(1) "Agency work or operations" includes, but is not limited to, utility sites; watershed property; land being used for conservation purposes; land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, property owned by a port that is used to support logistics uses, sites for broadband

equipment or wireless facilities, buffer sites located near sensitive governmental uses, including, but not limited to, wastewater treatment plants, and waste disposal sites.

(2) In cases where a local agency will only use a portion of land for agency's use, the local agency must comply with the SLA when disposing of the portion of land not being used for agency's use, even if revenue generated on that portion of the land is used to support the development on the portion of land that qualifies as agency's use. A local agency may issue an NOA that includes reasonable conditions or restrictions, as provided in section 202(a)(2)(D)(iv), noting that a portion of the land will be used for agency's use.

(3) Agency's use shall not include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development. Property disposed of for the purpose of investment or generation of revenue shall not be considered necessary for agency's use.

(4) In the case of a local agency that is a district, excepting those whose primary mission or purpose is to supply the public with a transportation system, agency's use may include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development, or may be used for the sole purpose of investment or generation of revenue if either (a) such use directly furthers the express purpose of the district's work or operations, or (b) such use is expressly authorized by a statute governing the district, provided the district complies with Government Code section 54233.5 where applicable. Also, the district's governing body must take action in a public meeting declaring that the use of the site meets one of these two requirements.

(b) Land that a local agency disposes of pursuant to the Eminent Domain Law, Code of Civil Procedure section 1240.010 et seq., shall also constitute agency's use, as defined in section 104 of these Guidelines, under either of the following conditions:

(1) The land is transferred to another property owner for the purpose of mitigating impacts to the transferee property owner resulting from the local agency's project.

(2) The local agency acquired the land for the express purpose of transferring the land to another entity.

(c) Notice of Disposition for Agency's Use: A local agency that plans to dispose of land for agency's use shall provide documentation that the land meets the definition of agency's use in Section 104(a) to HCD at least 30 days prior to disposition. A local agency that is using or plans to use the land for agency's use but is not disposing of the land, as defined in Section 102(i) of these Guidelines, is not required to send documentation to HCD.

Note: Authority cited: Government Code section 54221, subdivisions (b)(1), (c)(1), (c)(2)(A), (c)(2)(B).

ARTICLE II. SURPLUS LAND

Section 200. Surplus Land Determination Process

(a) Land must be declared either “surplus land” or “exempt surplus land,”~~,~~

as supported by written findings, before a local agency may take any action to dispose of it consistent with an agency's policies or procedures. Prior to taking any action to dispose of surplus land or participating in negotiations to dispose of surplus land with a prospective transferee, a local agency shall send a written Notice of Availability (NOA). A local agency may not solicit or accept offers to purchase or develop surplus land until the agency has first sent an NOA and, if the agency receives any responses to the NOA, completed negotiations with those parties. However, “participating in negotiations” does not include any of the following:
~~dispose of it consistent with an agency's policies or procedures.~~

(1) Issuing an RFP or RFQ to the entities identified in section 54222(a) for the purposes of complying with Government Code sections 54221(f)(1)(A), (F), (G), (H), and (I);

(2) Negotiating a lease, ENA, or option agreement for the purposes of meeting the affordable housing exemptions in Government Code section 54221(f)(1)(A), (F), (G), (H), and (I); or

(3) Negotiating with a developer to determine if the lease provisions of Government Code section 54221(d)(2) can be met.

(b) Surplus land shall have the definition set forth in ~~Section~~section 102(~~w~~dd) of these Guidelines and exempt surplus land shall have the definition and meet the requirements set forth in ~~Section~~section 103(~~b)(3~~c) of these Guidelines.

(c) Beginning April 1, 2021, “a central inventory of all surplus land” shall be reported to HCD no later than April 1 of each year on Table H of the ~~city~~city’s or county’s APR submitted pursuant to Government Code section 65400(a)(2).

Note: Authority cited: Government Code ~~Section~~section 54230, subdivision (c)(2), ~~Section~~section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code ~~Section~~section 54230, ~~Section~~section 65400.

Section 201. Notice of Availability

Any local agency disposing of surplus land, prior to disposing of that property or participating in negotiations to dispose of that property with a prospective transferee, shall send a written ~~notice of availability (~~NOA~~)~~ to ~~certain~~all parties designated in ~~the SLA~~Section 201(a)-(d) below. The notice shall be in a form prescribed by HCD in Appendix A of these Guidelines and shall comply with the following.

(a) Low- and Moderate-Income Housing ~~Availability~~ Notice of Availability.

(1) A written ~~notice of the availability~~NOA of surplus land provided on the form contained in Appendix A of these Guidelines for the purpose of developing low- and moderate-income housing shall be sent to the following:

(A) HCD and any local public entity as defined in Health and Safety Code ~~Section 50079~~section 50079 and Section 102(t) of these Guidelines, within whose jurisdiction the surplus land is located. HCD will maintain on its website an up-to-date listing ~~of all notices of availability throughout the state.~~

of all NOAs throughout the state. NOAs shall be delivered to HCD via the SLA Portal or Certified Mail.

(B) Housing sponsors that have notified HCD of their interest in surplus land that is in the county in which the surplus land is located or in all California counties. Housing sponsors must notify HCD of their interest in surplus land by completing a survey provided by HCD. Those interested in receiving notices from local agencies based on HCD's expressions-of-interest list are responsible for keeping their addresses and contacts current.

(2) An entity not on HCD's list may also respond to an NOA.

(3) All responses shall be date and time stamped by the local agency as they are received.

(4) All NOAs shall be sent by certified mail or email and shall include the location and a description of the surplus land.

~~(5) A NOA cannot be sent before the governing body for the local agency has declared the land for which the notice is being issued to be "surplus land", and any such notice sent prematurely will not be deemed valid.~~

(b) Park, Recreation and Open Space availability notices shall comply with the conditions and follow the requirements as described in Government Code ~~Sections~~sections 54221, subdivision (f)(2), 54222, and 54227, subdivision (b).

(c) School facilities surplus land availability notices shall comply with the conditions and follow the requirements as described in Government Code ~~Section~~section 54222(c).

(d) Infill Opportunity Zone or Transit Village Plan surplus land availability notices shall comply with the conditions and follow the requirements as described in Government Code ~~Section~~section 54222(d).

Note: Authority cited: Government Code ~~Section~~section 54230, subdivision (c)(2), ~~Section~~section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code ~~Section~~section 54221, subdivision (f)(2), ~~Section~~section 54222, and ~~Section~~section 54227, subdivision (b); Health and Safety Code ~~Section~~section 50079.

Section 202. Disposal of Surplus Land for Affordable Housing

~~After~~Prior to taking any action to dispose of surplus land, the governing board of a local agency ~~has held~~must hold the required public meeting to declare property as surplus land, as described in Section 102(~~w~~dd) of these Guidelines, ~~a Low- and Moderate-Income Housing Availability Notice~~and an NOA described in Section 201(a) must be sent to interested housing sponsors identified by the expressions-of-interest list maintained by HCD and local public entities within whose jurisdiction the surplus land is located and must invite those interested to respond to the local agency with a notice of interest.

(a) Negotiating Disposition of Surplus Land for Affordable Housing

(1) Response to ~~a~~an NOA of surplus land for the development of affordable housing

(A) 60 Days to Respond.

An entity or association interested in developing surplus land for affordable housing must notify in writing the disposing agency of its interest in purchasing or leasing the land within 60 days after the agency's ~~notice of availability of the land~~NOA is sent via certified mail or provided via electronic mail.

(i) A local agency may not issue ~~a request for proposals~~an RFP on surplus land less than 60 days from the date that the local agency issues the NOA ~~of surplus land~~.

(ii) If a notice of interest is received in response to an NOA, ~~a request for proposals~~an RFP may not be issued until after the conclusion of the 90-day negotiation period.

(B) Upon Receipt of Notice of Interest.

If a local agency disposing of surplus land receives a timely notice of interest from a proper entity, then a ~~90-day~~ good faith negotiation period of at least 90 days begins on the first day after the end of the 60-day period in Government Code ~~Section~~section 54222(e). If the price or terms cannot be agreed upon after the full 90-day good faith negotiation period, then the local agency may dispose of the surplus land without further regard to the SLA but must still comply with Government Code ~~Section~~section 54233 or 54233.5, as applicable.

(C) 90-Day~~,~~ Good Faith Negotiation Period.

(i) For purposes of the 90-day good faith negotiation period, residential use of

the surplus land by the prospective transferee shall be deemed an acceptable use. ~~Terms~~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 that terms agreed to as part of the 90-day good faith negotiation period must comply with the following:

~~(i)~~I. A local agency cannot prohibit residential use of the surplus land as a condition of a sale or lease.

~~(ii)~~II. A local agency cannot reduce the authorized number of residential units or the maximum lot coverage of the surplus land below what is allowed by zoning or general plan requirements.

~~(iii)~~III. A local agency may not require, as a condition of sale or ~~Lease~~lease, any design standards or architectural requirements that would have a substantial negative 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.

(ii) For the purpose of disposition of surplus land in Section 400(b)(1) of these Guidelines, the local agency must establish and document that good faith negotiations have taken place with each respondent.

(iii) HCD may request from local agencies a purchase and sale or lease agreement disposing of surplus land when good faith negotiations do not result in a disposition to an affordable housing entity.

(iv) Activities that demonstrate good faith negotiations include, but are not limited to:

I. Make a serious effort to meet at reasonable times and attempt to reach agreement;

II. Respond to letters of interest;

III. Respond to and consider reasonable offers to purchase or lease;

IV. Not require that development proposals significantly deviate from the NOA; and

V. Not arbitrarily end active negotiations after 90 days.

(D) For the purposes of complying with the SLA's requirements regarding NOAs, "participating in negotiations" does not include the commissioning of appraisals, due diligence prior to the sale or lease of the surplus land, discussions with brokers or real estate agents not representing a potential buyer, or other studies to determine value or best use of the surplus land, issuance of a request for qualifications, development of marketing materials, or discussions conducted exclusively among local agency employees and elected officials. ~~(Gov. Code Section 54222(f))~~

(E) If an entity believes a local agency has not negotiated with it in good faith pursuant to this section, the entity may notify HCD via the Surplus Lands Portal. ~~Prior to September 6, 2023, submissions were accepted at PublicLands@hcd.ca.gov.~~

(F) Sample negotiation process timeline. The following represents a sample timeline for a good faith negotiation per the definition in Section 102(m) of these Guidelines. Minor departures from this sample do not constitute per se bad faith, and differences in the timeline may be justified with prior notice to HCD.

- March 1, ~~2021~~2024 – disposing agency sends ~~a~~an NOA of surplus land as described in Section 201;
- ~~March 10, 2021 – first entity desiring to purchase or lease the surplus land sends notice of interest to disposing agency;~~
- March 12, ~~2021~~2024 – disposing agency receives notice of interest from first entity desiring to purchase or lease the surplus land;
- ~~March 20, 2021 – second entity desiring to purchase or lease the surplus land sends notice of interest to disposing agency;~~
- March 22, ~~2021~~2024 – disposing agency receives notice of interest from second entity desiring to purchase or lease the surplus land;
- April 30, ~~2021~~2024 – last day for an entity desiring to purchase or lease the surplus land to respond to the NOA;
- May 1, ~~2021~~2024 – 90-day, good faith negotiation period commences, as described in ~~Section~~section 202(a)(1)(C);
- July 30, ~~2021~~2024 – last day of 90-day, good faith negotiation period;
- July 31, ~~2021~~2024 – first day that disposing agency may dispose of the surplus land without regard to the amendments to the SLA, except that the disposing agency must still follow Government Code sections 54233 or 54233.5.

(2) Terms

(A) As part of the 90-day good faith negotiation period, a local agency and a

prospective transferee may agree to limitations on residential use or density if, without such 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 local agency's operation or facilities, and there is no feasible method to satisfactorily mitigate the impact.

(B) For low- and moderate-income housing purposes, a local agency may agree to a payment period of up to 20 years for a sale of surplus land in any contract of sale or sale by trust deed for the land. Such payment period may exceed 20 years but shall not exceed the term that the surplus land is required to be used for low- or moderate-income housing.

(C) A local agency may sell or lease surplus land at fair market value or fair market rent or less than fair market value or fair market rent.

(D) Agreement between the local agency and buyer.

(i) Failure to agree on sale/purchase price of land: If "fair market value" was determined by a single appraisal, a second appraisal value commissioned from a mutually acceptable firm may be averaged with the initial value to determine a sales price.

(ii) Partial lease/acquisition: A local agency may agree to a lease or

sale of part of the surplus land provided that the remaining parcel or parcels are disposed of as surplus land or exempt surplus land. A written justification for accepting a lease or sale of part of surplus land must accompany the Appendix B report to HCD.

(iii) Agency change of mind: A local agency may withdraw its NOA provided that no notices of interest have been received and a written "notice of withdrawal" is sent to all housing sponsors, local public entities, HCD, and any other developers to which the ~~notice of availability~~NOA was sent.

(iv) Conditions and restrictions required by the local agency as seller: A local agency may provide entities with reasonable conditions or restrictions for the surplus land in question, which must be included in the NOA, and should be reviewed by HCD pursuant to Section 400. The parties are required by the SLA to then negotiate in good faith. If ~~it appears that~~ the parties cannot resolve issues that would preclude a disposition within the 90-day negotiation period, the parties may discuss the issue(s) with HCD.

~~(b) Payment Period for Surplus Land Disposed of in Contract of Sale or Sale by Trust Deed~~

~~(1) If surplus land is disposed of for housing for persons and families of low and moderate income, the payment period shall not exceed the term that the land is required to be used for low- or moderate-income housing.~~

~~(2) If surplus land is disposed of for park or recreation purposes, for open-space purposes, or for school purposes, the local agency may provide for a payment period of up to 20 years.~~

(3) Multiple Notices of Interest

(A) A local agency may negotiate concurrently with all entities that provide notice of interest for the purpose of developing affordable housing that meets the requirements of Government Code ~~Section~~section 54222.5.

(B) In the event that any local agency disposing of surplus land receives a notice of interest to purchase or lease that land from more than one of the entities to which ~~a~~an NOA was given, the local agency shall give first priority to the entity

or entities that agree to use the site for affordable housing that meets the requirements of Government Code ~~Section~~section 54222.5, described as follows:

(i) Not less than 25 percent of the total number of units developed (which number includes density bonus units) shall be affordable housing as defined by Section 102(a) of these Guidelines.

~~(ii) If more than one entity proposes the same number of units that meet the requirements of Government Code Section 54222.5, priority~~

~~shall be given to the entity that proposes the deepest average level of affordability for the affordable units.~~

(~~C~~ii) If the local agency receives notices of interest from more than one entity that agrees to meet the requirements of Government Code ~~Section~~section 54222.5, then the local agency shall give priority to the entity that proposes to provide the greatest number of units that meet the requirements of Government Code ~~Section~~section 54222.5.

(iii) If more than one entity proposes the same number of units that meet the requirements of Government Code section 54222.5, priority shall be given to the entity that proposes the deepest average level of affordability for the affordable units.

(4) ~~Grounds for~~Following good faith negotiations, grounds for a local agency to reject an offer include, but are not limited to, the following:

(A) ~~A local agency may reject an offer when the~~The local agency and buyer/lessee cannot agree on the sales price and terms or lease terms.

(B) ~~A local agency may reject an offer when priority~~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 consistent with Government Code ~~Section~~section 54222.5.

(C) ~~A local agency may reject an offer when the~~The interested entity is not responsive to a local agency's reasonable conditions or restrictions as described in the NOA, where consistent with these Guidelines and the SLA~~, and such conditions or restrictions are reviewed by HCD~~.

(~~c~~b) Requirements If Negotiations End with No Sale or Lease of Surplus Land

(1) Local Agencies That Are Not Districts.

(A) If the local agency does not agree to price and terms with any entity to which an NOA ~~of land~~ was given pursuant to these Guidelines, or if no entity to which a NOA was given pursuant to these Guidelines responds to that notice, then the land in question may be disposed of outside of the SLA, except that ~~Section 202(c)(1) and (2)~~this section shall apply.

In ~~such a case,~~all dispositions of surplus land in which the local agency does not agree to price and terms or in which no entity responds, an affordability covenant must still be recorded against the property. The covenant must state that if 10 or more residential units are developed on the property, not less than 15 percent of the total number of residential units developed on the ~~parcels~~property shall be sold or rented as affordable housing as defined by Section 102(a) of these Guidelines.

~~(B) The purchasing entity shall agree to the following additional requirements:~~

(i) Rental units shall remain at an affordable housing cost to, and occupied by, lower-income households for a period of at least 55 years. Ownership units shall remain at an affordable housing cost to, and occupied by, lower-income households for a period of at least 45 years. Rental or ownership housing located on tribal trust lands shall remain at an affordable housing cost to, and occupied by, lower-income households for a period of at least 50 years. The initial occupants of all ownership units on the surplus land shall be lower-income households and the unit shall be subject to an equity sharing agreement consistent with Health and Safety Code ~~Section~~section 65915(c)(2). Any subsequent occupants shall also be lower-income households, if necessary, for the unit to remain

occupied by lower-income households, for at least 55 years, 45 years, or ~~55~~50 years, respectively.

(ii) The requirements set out in this subdivision ~~(a)~~ above shall be contained

in a covenant or restriction to be recorded against the surplus land ~~at the time of sale, which by its express terms~~prior to land use entitlement, and the covenant or restriction shall run with the land and shall be enforceable by any of the following parties~~,~~ against any owner who violates the covenant or restriction and each successor in interest who continues the violation:

I. The local agency that disposed of the property.

~~I~~II. Any resident of an affordable ownership or rental unit

described in this subdivision ~~(a)~~.

~~II~~III. A resident's association with members who reside in units

described in this subdivision ~~(a)~~.

~~III~~IV. A former resident of a unit described in this subdivision ~~(a)~~ who

last resided in that unit.

~~IV~~V. An applicant seeking to enforce the covenants or restrictions

for a particular unit, ownership or rental, as described in this subdivision ~~(a)~~, if the applicant conforms to all of the following:

a. Is of low or moderate income, as defined in ~~Section~~section 50093 of the Health and Safety Code;

b. Is able and willing to occupy that particular unit; and

c. Was denied occupancy of that particular unit due to an alleged breach of a covenant or restriction implementing Government Code ~~Section~~ section 54222.5.

~~V~~VI. A person on an affordable housing waiting list who is of low or moderate income, as defined in ~~Section~~section 50093 of the

Health and Safety Code, and who is able and willing to occupy a unit subject to this provision of the Guidelines.

(~~C~~B) ~~A~~local A local agency shall provide a draft copy of any restrictions to be recorded against the surplus land to HCD as an attachment to the form prescribed by HCD in Appendix B.

(2) Districts.

(A) If a local agency that is a district, excepting those whose primary mission or purpose is to supply the public with a transportation system, disposes of surplus land where local zoning permits development of 10 or more

residential units or is rezoned within five years of the disposal to permit the development of 10 or more residential units, and 10 or more residential units are developed on the property, not less than 15 percent of the total number of residential units developed on the parcel shall be sold or rented as affordable housing as defined by Section 102(a) of these Guidelines, and the additional requirements contained in Section 202(c)(1)(~~B~~A)(~~i.iii~~i)-(ii) of these Guidelines shall apply.

(B) A local agency that is a district shall provide a draft copy of any restrictions to be recorded against the surplus land to HCD on the form prescribed by HCD in Appendix B of these Guidelines.

(C) This subsection shall not apply to projects as defined in Health and Safety Code ~~Section~~section 32121(j).

(c) Disposition of contiguous land.

(1) If a local agency seeks to simultaneously dispose of multiple contiguous parcels of surplus land to the same receiving entity, or any entity working in concert with another receiving entity, such that it would reduce the capacity of individual parcels to support at least ten housing units, the applicable affordability covenant must be applied such that the amount of affordable housing required is based on the aggregate capacity of the contiguous parcels.

(2) If the surplus land consists of multiple contiguous parcels or is one parcel that will be subdivided into multiple contiguous parcels, the land can be treated as one parcel by a master developer for the purpose of applying the applicable affordability covenant.

(d) Payment Period for Surplus Land Disposed of in Contract of Sale or Sale by Trust Deed.

(1) If surplus land is disposed of for housing for persons and families of low and moderate income, the payment period shall not exceed the term that the land is required to be used for low- or moderate-income housing.

(2) If surplus land is disposed of for park or recreation purposes, for open-space purposes, or for school purposes, the local agency may provide for a payment period of up to 20 years.

Note: Authority cited: Government Code ~~Section~~section 54230, subdivision (c)(2), ~~Section~~section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code ~~Section 54221, Section 54222, Section 54222.5, Section 54223, Section 54225, Section 54226, Section 54227, Section~~section 54221, section 54222, section 54222, subdivision (f), section 54222.5, section 54223, section 54225, section 54226, section 54227, section 54233; Health and Safety Code ~~Section~~section 32121.

ARTICLE III. REQUIREMENTS TO BE PLACED ON SURPLUS LAND FOR AFFORDABLE HOUSING

Section 300. Requirements When an Entity Proposes to Use the Surplus Land for Developing Affordable Housing

(a) An entity proposing to use the surplus land for affordable housing shall agree to make no less than 25 percent of the total number of units developed on the parcels as affordable housing pursuant to Section 102(a) of these Guidelines. The entity shall ~~agree to~~comply with the following additional requirements:

(1) Rental units shall remain at an affordable housing cost to, and occupied by, lower-income households for a period of at least 55 years and 50 years for housing located on tribal trust lands.

(2) Ownership units shall remain at an affordable housing cost to, and occupied by, lower-income households for a period of at least 45 years and 50 years for housing located on tribal trust lands. The initial occupants of all affordable ownership units on the property shall be lower-income households and the ~~unit~~units shall be subject to an equity sharing agreement consistent with Health and Safety Code ~~Section~~section 65915(c)(2). Any subsequent occupants shall also be lower-income households, if necessary~~,~~ for the unit to remain occupied by lower-income households~~,~~ for at least 45 years and at least 50 years for housing located on tribal trust lands.

(3) The affordable residential units required under the covenant described in subdivision (b) below must be developed prior to or at substantially the same time as the unrestricted units and non-residential portion of the development. If the development occurs in phases, the affordability requirement should be met in each phase.

(b) The requirements set out in subdivision (a) above shall be contained in a covenant or restriction recorded against the surplus land at the time of sale, which by its express terms shall run with the land and shall be enforceable by any of the following parties, against any owner who violates the covenant or restriction and each successor in interest who continues the violation:

(1) The local agency that disposed of the property.

(2) Any resident of an affordable ownership or rental unit described in subdivision (a).

(3) A resident's association with members who reside in units described in subdivision (a).

(4) A former resident of a unit described in subdivision (a) who last resided in that unit.

(5) An applicant seeking to enforce the covenants or restrictions for a particular unit, ownership or rental as described in subdivision (a), if the applicant conforms to all of the following:

(A) Is of low or moderate income, as defined in ~~Section~~section 50093 of the Health and

Safety Code;

(B) Is able and willing to occupy that particular unit; and

(C) Was denied occupancy of that particular unit due to an alleged breach of a covenant or restriction implementing Government Code ~~Section~~section 54222.5.

(6) A person on an affordable housing waiting list who is of low or moderate income, as defined in ~~Section~~section 50093 of the Health and Safety Code, and who is able and willing to occupy a unit subject to this provision of the Guidelines.

(c) A local agency shall provide a draft copy of any restrictions to be recorded against the surplus land to HCD as an attachment to the form prescribed by HCD in Appendix B.

Note: Authority cited: Government Code ~~Section~~section 54230, subdivision (c), ~~Section~~section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code ~~Section~~section 54222.5, ~~Section~~section 54233; Health and Safety Code ~~Section~~section 50093, ~~Section~~section 65915.

ARTICLE IV. REPORTING REQUIREMENTS

Section 400. Local Agency Reporting Requirements

(a) Pre-Negotiation and Disposal Notice. A local agency must submit ~~a~~an NOA to HCD, ~~any~~ all ~~other~~ local public entities as defined in Health and Safety Code section 50079 within whose jurisdiction surplus land is located, and all interested housing sponsors that have provided notice to HCD.

(1) Prior to disposing of surplus land or participating in negotiations to dispose of surplus land with a prospective transferee, a written NOA shall be sent to HCD on the form in Appendix A pursuant to Section 201 of these Guidelines. If the NOA includes any local agency conditions or restrictions regarding development, local agencies are advised to send such conditions or restrictions ~~must be reviewed by HCD prior to the initiation of negotiations with any interested and qualified developer~~to HCD for review before sending the NOA to the required entities.

(b) Post-Negotiation Notice and Proposed Disposition Summary: A proposed disposition summary must be sent to HCD on Appendix B at the conclusion of negotiations ~~for~~at least 30 days before the disposition of surplus land. Local agencies are only required to fill out the sections of Appendix B that apply to the disposition. Not all sections will apply to every disposition.

(1) Prior to finalizing any agreements or disposing of any surplus land, the local agency shall provide to HCD a copy of the resolution (or other document recording formal action) declaring the property surplus, a description of the NOAs sent, a description of ~~the~~ negotiations conducted with any responding entities, including any non-solicited expressions of interest in regard to the disposal of the surplus land, ~~and a~~proof of delivery of the NOA to all CalHFA-certified housing sponsors and local public entities, and a draft copy of any restrictions to be recorded against the property pursuant to Government Code ~~Sections~~sections 54233 or 54233.5, whichever is applicable, ~~in a~~on the form prescribed by HCD in Appendix B. A sample covenant/restriction is provided in Appendix C. A local agency shall also provide HCD a copy of any recorded restrictions upon final disposition.

(A) Local agencies are not responsible for contacting housing entities that provided inaccurate or inactive emails or contact information within the CalHFA certified housing sponsors list. Affordable housing entities are responsible for maintaining current contact information.

(2) A local agency may submit this information to HCD after it has sent NOAs required by Government Code ~~Section~~section 54222 and concluded negotiations with any responding entities. Article V of these Guidelines provides details on HCD's required review of this information.

(3) If a local agency proposes to dispose of surplus land to an entity that does not have first priority and/or priority pursuant to Government Code ~~Section~~section 54227, the local agency is required to provide HCD an adequate written explanation.

(c) A local agency ~~shall provide HCD a copy of any restrictions to be recorded against the property pursuant to sections 202(d~~may submit disposition documents identified in Section 400(b)(1~~)(B) and 300(b~~) of these Guidelines ~~as an attachment to Appendix B.~~to HCD any time after the 60-day NOA period or, if applicable, the 90-day good

faith negotiation period. In cases where a local agency is seeking to dispose of surplus land, the local agency is required to submit complete disposition documentation to HCD and receive a Findings Letter from HCD only once, regardless of when a final disposition occurs.

(d) A local agency that is a city, county, or city and county shall submit an APR pursuant to Government Code section 65400 including the following information:

(1) A central inventory of all surplus land and all lands as of December 31 in excess of the local agency's foreseeable needs, if any, identified pursuant to Government Code ~~Section~~section 50569. Beginning in 2021, this inventory is to be submitted to HCD by April 1 of each year. This inventory will become part of the APR as Table H. Please reference ~~Section~~section 601 for web links which detail APR and ~~Housing Element~~housing element requirements.

(2) Jurisdiction-owned sites identified in the housing element sites inventory subsequently disposed of by the jurisdiction in Table G of the ~~Housing Element~~housing element APR.

(e) Notice of Exemption Determination: A local agency that determines that property is exempt from the SLA shall support such a determination with written findings and shall provide a copy of the written determination to HCD at least 30 days prior to disposition.

(1) A local agency must provide HCD with a copy of the resolution (or other document recording formal action) declaring the property exempt surplus land ~~that includes~~and written findings supporting such a declaration ~~will generally be considered sufficient documentation to meet this requirement~~.

(2) A local agency must provide written findings that describe which exemption applies to the surplus land and how the surplus land meets the requirements of that exemption. Additional documentation may be necessary to support those written findings.

(3) Local agencies declaring land identified in Government Code section 54221(f)(1)(A), (B), (E), (K), (L), or (Q) as exempt surplus land pursuant to Government Code 54221(b)(4) must do the following: The notice must include a citation to the exemption (e.g., Government Code section 54221(f)(1)(A) for an affordable housing project), a contact name and email for public comments, and findings/reasons the land meets the exemption. HCD will accept online or newspaper publishing of the notice with evidence it was published and made available for 30 days (daily publication is not necessary). For newspaper publication, HCD will accept a notice published in a newspaper of general circulation in the local agency's area. For online publication, the notice must be available for the full 30 days, at minimum.

(~~2~~4) Local agencies are encouraged to notify HCD via the Surplus Lands Portal prior to having the resolution approved in order to clarify whether land should be declared "surplus land" or "exempt surplus land~~"~~. ~~Prior to September 6, 2023, submissions were accepted at PublicLands@hcd.ca.gov.~~" HCD requires at least 30 days to complete the review.

Note: Authority cited: Government Code ~~Section~~section 54230, subdivision (c), ~~Section~~section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code ~~Section~~section 50569, ~~Section~~section 54221, ~~Section~~section 54222, ~~Section~~section 54230.5, ~~Section~~section 54233, ~~Section~~section 54233.5, ~~Section~~section 65400.

ARTICLE V. PERFORMANCE MONITORING AND PENALTIES

Section 500. HCD Monitoring, Recording, and Reporting

(a) Initiation of Monitoring. Beginning on January 1, 2021, HCD shall initiate monitoring of local agency compliance with certain requirements imposed by the SLA.

(b) Educational Materials and Technical Assistance. To assist agencies with SLA compliance, HCD will from time to time make available educational resources and materials regarding the SLA and these Guidelines to local agencies and the public. Local agencies may request technical assistance via the Surplus Lands Portal.

~~(c) HCD Findings:~~

(~~1~~c) ~~Review:~~HCD's Findings. HCD shall review the information and documents submitted by a local agency pursuant to Section 400 of these Guidelines.

~~(2) Notice of Violation (NOV):~~ HCD shall consider and make findings ~~on~~as to whether the local agency's proposed sale or lease of the ~~surplus~~ land will violate the SLA ~~and~~, including these Guidelines.

(1) If HCD determines that the proposed sale or lease will violate the SLA, HCD shall ~~make~~issue a Findings Letter that contains written findings ~~and provide them~~supporting HCD's determination. HCD shall send the Findings Letter to the local agency within 30 days of receipt of the local agency's submittal ~~of all of the following:~~ .

~~(i) a description of the notices of availability sent; (ii) a description of the negotiations conducted with any responding entities in regard to the disposal of the surplus land; and (iii) a copy of any restrictions to be recorded against the surplus land pursuant to Health and Safety Code Section 54233 or 54233.5, whichever is applicable, in a form prescribed by HCD (collectively "Complete Submittal")~~ A) HCD's 30-day response period will ~~not~~ begin to run ~~until~~when HCD receives ~~the Complete Submittal. HCD shall provide the local agency at least 60 days from the date that HCD sends the NOV to respond to the NOV before taking any other action.~~all the required documents and information listed in Section 400 of these Guidelines. HCD will immediately, and not more than 30 days after receipt of the required documents and information, notify the local agency in writing if HCD determines any required documents or information necessary for HCD's findings are missing.

(d) Response to HCD's Findings. The local agency shall consider HCD's written findings made in the Findings Letter pursuant to ~~Section 500~~subdivision (c) and ~~shall~~, within 60 days of receiving the Findings Letter, do one of the following:

(1) Correct any issues identified by HCD or explain how the local agency will correct issues identified by HCD.

(2) Provide written ~~responses to HCD prior to disposition of the surplus land~~findings explaining ~~how its~~the reason(s) the local agency's process for disposing of surplus land complies with the SLA~~ and addressing each of HCD's written findings~~.

(e) HCD's Final Determination. HCD shall evaluate any written findings, corrections, or proposals to correct provided by the local agency pursuant to subdivision (d) and provide the local agency with a Determination Letter or a Notice of Violation.

(1) Determination Letter. If HCD finds that the local agency has corrected all issues, or if HCD concurs that the local agency's process for disposing of surplus land complied with the SLA, HCD shall notify the local agency of its determination in a Determination Letter.

~~(e) HCD shall evaluate any written responses provided by the local agency pursuant to Section 500(d) to determine whether the local agency's findings are deficient in addressing the issues identified by HCD.~~

~~Note: Authority cited: Government Code Section 54230, subdivision (c), Section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code Section 54230.5~~

~~Section 501. Penalties~~

~~(a) Local agency's failure to adequately respond to HCD.~~

(~~1~~2) ~~If~~Notice of Violation. If HCD finds that the local agency ~~does~~has not ~~correct all the issues identified by HCD's written findings or does not provide written findings explaining the reason its~~corrected all issues, or if HCD finds that the local agency's process for ~~selling or leasing~~disposing of surplus land ~~complies~~ did not

comply with the SLA, HCD shall notify the local agency in a Notice of Violation, and may notify the Attorney General, that the local agency is in violation of the SLA. ~~HCD may seek to enforce the SLA and pursue remedies, including, but not limited to, injunctive or declarative relief.~~

~~(2) If the local agency provides written findings explaining the reason its process for selling or leasing surplus land complies with the SLA, but HCD determines that the findings are deficient pursuant to Section 500(e), HCD shall notify the local agency and may notify the Attorney General that the local agency is in violation of the SLA. HCD may seek to enforce the SLA and pursue remedies, including, but not limited to, injunctive or declarative relief.~~

(A) If a local agency receives a Notice of Violation, the local agency must hold an open public meeting to review the Notice of Violation. In addition to all legally required public meeting noticing requirements, the local agency must also post the public notice to the agency's website (if applicable), post the notice in a conspicuous public place in the local agency's office, and send the public notice to HCD via the Surplus Land Act Portal no later than the time of posting required by the Brown Act (commencing with Government Code section 54950). A local agency is not required to disclose information conducted during closed sessions at this meeting.

(B) A local agency is prohibited from finalizing the disposition of surplus land subject to a Notice of Violation until an open, public meeting is held pursuant to this Section.

(C) A local agency is exempt from subdivision (e)(2)(A) and (B) of this Section if the agency ceases the disposal of surplus land and informs HCD they have done so. If a local agency resumes the existing disposition of land at a later date, all the provisions of subdivision (e)(2)(A) and (B) of this Section apply.

(3) County of Orange and the Cities within the County of Orange—Additional Requirements. For the County of Orange or any city within the County of Orange, the following requirements apply in addition to the requirements described in subdivisions (c)-(e)(2):

(A) HCD shall make its Final Determination within 30 days of receiving the local agency's response to HCD's Findings Letter described in subdivision (d).

(B) If, pursuant to subdivisions (c) or (e), HCD issues a Findings Letter or Notice of Violation determining that the proposed disposition of surplus land will violate the SLA, the local agency shall not dispose of the surplus land until it has received a Determination Letter pursuant to subdivision (e)(1).

Note: Authority cited: Government Code section 54230, subdivision (c), section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code section 54230.5.

Section 501. Penalties

(a) HCD may seek to enforce the SLA and pursue all applicable legal and equitable remedies consistent with Government Code section 54230.6, including, but not limited to, injunctive or declaratory relief, if a local agency disposes of land, or attempts to dispose of land, in violation of the SLA.

(b) Local agency's violation of surplus land disposition requirements; ~~administrative~~ penalties.

(1) ~~A local agency that disposes of land in violation of the SLA~~If, after receiving a ~~NOV from HCD is in violation of the SLA pursuant to HCD's review~~Findings Letter or a Notice of Violation, as described in Section 500~~(c).~~ of these Guidelines, a local agency disposes of surplus land without correcting all violations identified in the Findings Letter or Notice of Violation, the local agency

~~(2) A local agency shall have 60 days from the date of the NOV to cure or correct an alleged violation before an action may be brought to enforce Government Code Section 54230.5, including penalties pursuant to Section 501(b)(3) of these Guidelines, unless the local agency disposes of the land before curing or correcting the alleged violation.~~

~~(3) If the local agency fails to correct the violation within 60 days from the date of the NOV, an administrative penalty of 30 percent of the final sale price of the land sold in violation of the SLA, or 50 percent for each subsequent violation, shall be invoiced by HCD to the local agency.~~

is liable for a penalty of 30 percent of the applicable disposition value of the land disposed of in violation of the SLA, and 50 percent of the applicable disposition value for each subsequent violation.

(A) These penalties shall not apply to clerical errors or violations of the SLA that do not impact the availability, priority, or construction of affordable housing (e.g., the amount of affordable housing provided) or the ultimate disposition of the land in compliance with the SLA. However, failure to issue an NOA, to notice the required entities, to provide at least 90 days of good faith negotiations, or to provide a recorded covenant to HCD may impact the availability, priority, or construction of affordable housing or the ultimate disposition of the land in compliance with the SLA. Any violations of the SLA that limit the opportunity of affordable housing entities to purchase non-exempt surplus land are not exempt from the penalties established in Government Code section 54230.5.

(B) For the purposes of this section, "applicable disposition value" means:

(i) In the case of a sale, the greater of the final sale price of the land or the fair market value of the surplus land at the time of sale, as determined by an independent appraisal of the surplus land sold in violation of the SLA. Appraised value should be determined by an independent, third-party appraisal prepared by a Member Appraisal Institute qualified appraiser and charged to the local agency no less than 60 days after receipt of a Notice of Violation.

(ii) In the case of a lease, the discounted net present value of the fair market value of the lease as of the date the lease was entered into, as determined by an independent appraisal of the lease of surplus land in violation of the SLA. The discounted net present value should be determined by an independent, third-party appraisal prepared by a Member Appraisal Institute qualified appraiser and charged to the local agency no less than 60 days after receipt of a Notice of Violation.

(2) The penalty shall be deposited into a local housing trust fund, except that the local agency may elect to instead deposit the penalty funds into the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund.

(A) The penalty shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Asset Funds, funds dedicated to housing for very low-, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds.

(B) The local agency shall commit and expend the penalty funds within five years of deposit into the local housing trust fund for the sole purpose of financing newly constructed housing units that are affordable to extremely low-, very low-, or low-income households.

(i) If the penalty funds deposited into the local housing trust fund have not

been expended within five years after deposit, the funds shall revert to the state and be deposited into the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Low Fund for the sole purpose of financing newly constructed housing units located in the same jurisdiction as the surplus land and that are affordable to extremely low-, very low-, or low-income households.

(C) Expenditure of any penalty funds deposited into the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund pursuant to this section shall be subject to appropriation by the Legislature.

(43) ~~Upon receipt of HCD's invoice, the~~The local agency may appeal the penalty assessment to HCD's Director by submitting ~~to the Director~~ a written appeal to the Director. The written appeal shall be limited to a statement of relevant facts, arguments, and evidence demonstrating the alleged error of law, procedure, or fact upon which the appeal is based. ~~Pursuant to statute, penalties~~Penalties are mandatory in the absence of such error and cannot be waived or modified for grounds not stated in ~~Government Code Title 5, Division 2, Part 1, Chapter 5, Article 8~~the SLA.

(~~5~~4) Once the written appeal is submitted to the Director, HCD may request ~~but is not required to accept~~ additional information or materials from the local agency for consideration. Appeals are to be submitted to the Director at the following address:

California Department of Housing and Community Development
~~Division of Housing Policy Development~~
~~2020 W. El Camino Avenue, Suite 500~~
Division of Housing Policy Development
651 Bannon Street, Suite 400
Sacramento, ~~California 95833~~CA 95811

(~~6~~5) The Director will accept appeals delivered through a carrier service such as the U.S. Postal Service, UPS, FedEx, or other carrier services that provide date stamp verification of delivery. Deliveries must be received during HCD's weekday (non-state holiday) business hours of 9:00 a.m. to 5:00 p.m. Pacific Standard Time.

(~~7~~6) Appeals must be received by the Director no later than thirty (30) business days from the date of HCD's ~~invoice~~assessment of the ~~assessed administrative~~ penalty.

(~~8~~7) The Director shall render ~~the~~a written decision ~~in writing~~on the appeal within forty-five (45) business days after notice and hearing ~~in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code~~.

(~~9~~8) The Director's decision shall be HCD's final decision.

(c) A local agency that sells or leases surplus land without complying with Sections 200(a), 201, 202, 300, 400(a), and 400(b) of these Guidelines violates the SLA.

(d) HCD may take action pursuant to Government Code section 65585.1 if a city, county, or city and county violates the SLA.

Note: Authority cited: Government Code ~~Section~~section 54230, subdivision (c), ~~Section~~section 54230.5, subdivision (b)(2)(D). Reference cited: Government Code ~~Section~~section 6250 et seq., ~~Section~~section 54222, ~~Section~~section 54230.5, ~~Section~~section 65589.5.

Section 502. Private Enforcement

(a) ~~An~~A public or private entity identified in Government Code ~~Section~~section 54222, or a person who would have been eligible to apply for residency in any affordable housing developed, or a housing organization as defined in Government Code ~~Section~~section 65589.5, or any beneficially interested person or entity, may bring an action to enforce Government Code ~~Section~~section 54230.5.

(b) ~~At least 30 days prior to bringing an action pursuant to subdivision (a) above, a notice of intent to enforce the SLA shall be provided to the local agency and to HCD, identifying the alleged violations of these Guidelines and/or the SLA.~~A public or private entity seeking to enforce Government Code section 54230.5 shall send a Notice of Alleged Violation to the local agency and provide a copy to HCD. The local agency has 60 days from the date of the Notice of Alleged Violation to cure or correct before the public or private entity may take further action, unless the local agency disposes of the land before curing or correcting the alleged violation, or HCD notifies the local agency in a Determination Letter that it is not in violation of the SLA in less than 60 days of receipt of the Notice of Alleged Violation.

(c) If HCD has not issued a Findings Letter to the local agency, HCD shall review the Notice of Alleged Violation submitted by the public or private entity and take action as appropriate. HCD may send the local agency a Notice of Violation, send a Determination Letter notifying the local agency it is not in violation of the SLA, or decline to take any action on the Notice of Alleged Violation.

(~~c~~1) If HCD ~~has not issued a NOV, HCD shall review the notice of intent to enforce the SLA and within 30 days notify the local agency if it must cure or correct the alleged violation in subdivision (b)~~sends the local agency a Notice of Violation, HCD shall also provide a copy of the Notice of Violation to the public or private entity that submitted the Notice of Alleged Violation. The local agency shall have 60 days from ~~receiving this notification from HCD~~receipt of HCD's Notice of Violation to cure or correct ~~the alleged violation before an action may be brought, unless the local agency disposes of the land before curing or correcting the alleged violation, or HCD deems the alleged violation not to be a violation in less than 30 days.~~pursuant to Section 500 of these Guidelines before HCD or an entity identified in Section 502(a) of these Guidelines may take further action to enforce Government Code section 54230.5. Local agencies receiving a Notice of Violation from HCD must also hold an open, public meeting pursuant to Section 500(e)(2)(A) of these Guidelines.

(2) If HCD sends a Determination Letter notifying the local agency that it is not in violation of the SLA, HCD shall also send a copy of the Determination Letter to the public or private entity.

Note: Authority cited: Government Code ~~Section~~section 54230, subdivision (c), ~~Section~~section 54230.5,
subdivision (b)(2)(D). Reference cited: Government ~~Section~~Code section 54222, ~~Section~~section 54230.5, ~~Section~~section 65589.5.

Appendix A – Notice of Availability
~~Form~~**Forms**

Notice of Availability Cover Letter:
https://www.hcd.ca.gov/community-development/disaster-recovery-programs/docs/1.20.21.LS.SLA_TA_NoticeAvailability_CoverLetter.docx

Notice of Availability Property Description:
https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.hcd.ca.gov%2Fsites%2Fdefault%2Ffiles%2Fdocs%2Fplanning-and-community%2Fsla-ta-notice-availability-property-description.xlsx&wdOrigin=BROWSELINK

Appendix B – Description of Disposition Form

https://www.hcd.ca.gov/~~community-development/disaster-recovery-programs/docs/SLA_TA_DispositionDescriptionTemplate2~~sites/default/files/docs/planning-and-community/disposition-description-template.xlsx

Appendix C – Sample Covenant/Restriction

https://www.hcd.ca.gov/community-development/docs/1.20.LS.SLA_TA_SampleCovenantRestriction.docx

Appendix D – HCD Survey to Indicate Interest in Surplus Land

Housing sponsors, as defined by ~~Section~~section 50074 of the Health and Safety Code, may notify HCD of their interest in surplus land pursuant to ~~Section~~section Government Code section 54222(a)(1) using the survey at the link below:

https://~~www.surveymonkey.com/r/ZRCC3FL~~calhcd.service-now.com/csp?id=csm_sc_cat_item_public&sys_id=e2a1239747df355062339362736d4335

Summary report: Litera Compare for Word 11.2.0.54 Document comparison done on 8/5/2024 5:10:20 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: sla-guidelines-final.pdf	
Modified filename: final-updated-surplus-land-act-guidelines-2024.pdf	
Changes:	
Add	750
~~Delete~~	539
~~Move From~~	0
Move To	0
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	1
Embedded Excel	0
Format changes	0
Total Changes:	1290