

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



LEAGUE OF  
**CALIFORNIA  
CITIES**

**League of California Cities  
City Managers Conference  
February 9, 2023**

**Kosmont Companies**

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**CA Dept. of Housing & Community Dev.**

Laura Nunn

**City of Anaheim**

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**BEST BEST & KRIEGER LLP**  
ATTORNEYS AT LAW

# Session Overview

<b>Scott Mitnick</b> Senior Vice President Kosmont Companies	Introduction, Overview & Trends
<b>Laura Nunn</b> Senior Manager CA Dept. of Housing & Community Development	SLA Implementation & Compliance
<b>Jim Vanderpool</b> City Manager City of Anaheim	Public Agency Perspective
<b>Matthew Cody</b> Of Counsel Best Best & Krieger	SLA Transactions & Documentation



# Overview & Trends – Scott Mitnick

# Communities at Crossroads: A Unique Opportunity for a Vital Future

*Leverage private sector momentum to improve your community's services & quality of life*

Timely opportunity to access new funding sources and economic development tools that have emerged in a post-COVID digital world:

**Economic Toolkit** with new / expanded tools such as special districts (EIFDs, CRIAs), zoning strategies, and tax-exempt financing.

**New Funding Sources** from federal and state government

Compliance with avalanche of State policy requirements imposing density, zoning standards, and redirecting the disposition of local public agency owned real estate (Surplus Land Act)

# Community Investment: Private Sector's Opportunities and Challenges

## Where is Land Use & Development Heading?

### Public Policy is Driven by State

California focus is on housing / sustainability / resiliency

Housing Element mandates: Density can create value to entice investment (some HEs give that value away)

Cities struggle to raise the revenues needed to fund community services and improve quality of life

Many cities changing perspective on zoning.

Grant funding from state/federal enables projects

### Complex Predevelopment Process

Entitlement process in California is complex:

CEQA environmental review, zoning and land use procedures, public hearings and legal challenges.

**Surplus Land Act to contend with: impacts public land sales or leases to private sector**

### Post-Covid Trends...are here to stay

Telework reshapes the home and workplace

Densification of suburbia – housing needed

Consumers focused on service, essentials and experience;

E-commerce is escalating

Retailers are “resetting and resizing, upgrading workforce / automation, supply chain improvements, omnichannel

Automated showrooms /distribution hubs/ service hubs

### Impact on Land Use & Econ Dev

Reconfiguration of retail corridors/downtown/centers to include blended uses: residential clusters, outdoor amenities

Residential typically yields highest land values and returns

Industrial uses are booming:  
distribution, entertainment studios, bio science, tech

# Key Land Use Trends for Economic Development



## Housing is Not a Loss Leader, it's a Growth Driver

### Housing Creation as Economic Development

- New housing can generate significant new tax revenues and support local jobs
- Housing is not necessarily a net negative fiscal impact, especially at current property values

## Retail is Not Just Retail Anymore

### Retail Reimagination as Economic Development

- US over-built on retail; ~25% of U.S. malls may close over next 3-5 years, COVID accelerates pre-covid
- Blended/mixed use projects integrate multiple uses (*housing, retail, open space, office, hotel*) onto one site

## Telework is Reconfiguring Office

### Office Conversions as Economic Development

- Telework and work from home options are reshaping needs for office space & business districts
- Job redistribution tied to housing
- Vacancies can lead to reduced assessments and fiscal pressure

## Industrial / Distribution is Critical for Your Economy

### Industrial & Fulfillment as Economic Development

- Modern industrial is not “your father’s industrial” – not smokestacks
- Retail won't thrive without distribution
- Booming demand for distribution, e-commerce, and data centers, blending for fulfillment/delivery, job creators

# Public Sector Perspectives

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

# Surplus Land Act (SLA) Overview

## Origin

In a response to the massive Statewide housing shortage, State Legislature passed dozens of housing bills including AB 1486 (Surplus Land Act) to address this crisis.

## Purpose

The SLA gives affordable housing developers a right of first refusal on all public agency owned land in the State of California. **Does not necessarily prevent agencies from ultimately selling or leasing property for other uses or fair market value.**

## Mandate

Public Agencies in California (e.g., cities, counties, special districts, school districts, etc.), with certain exceptions, must follow this mandate prior to selling or leasing any public agency owned real estate.

## Process

The SLA requires an up to 150-day request for proposal/bid process to either select or reject an affordable housing project/proposals. Once rejected, the property can be sold or leased to broader market.

# New World of Surplus Land Act Requirements

## **The Old Days:**

Want to sell / lease a City property? Just put out an RFP/Q

## **The New World Order:**

The SLA requires public agencies to first go through a process of offering property to affordable housing developers before pursuing other opportunities.

## **Opportunity:**

Public agencies should look at SLA as a “Value Capture” Opportunity to more efficiently use public properties:

- Performance-based leases / ground leases
- Monetizing assets (such as civic centers, parking garages, etc.)
- Selling property to private sector – includes lease-back strategies, continued operation of existing use, redevelopment into new uses



## **HEADLINES**

- “Let’s Tap the Breaks.” San Diego Not Ready to Solicit Bids to Redo City Hall Complex  
*San Diego Union-Tribune, 1/9/23*
- [Santa Monica] Takes First Step Toward Offering Lease on Civic Auditorium, Other Site  
*Santa Monica Daily Press, 10/20/22*
- 555 New Apartments Planned for South Natomas as Sacramento Sells Land to Developer  
*Sac Bee, 1/25/22*

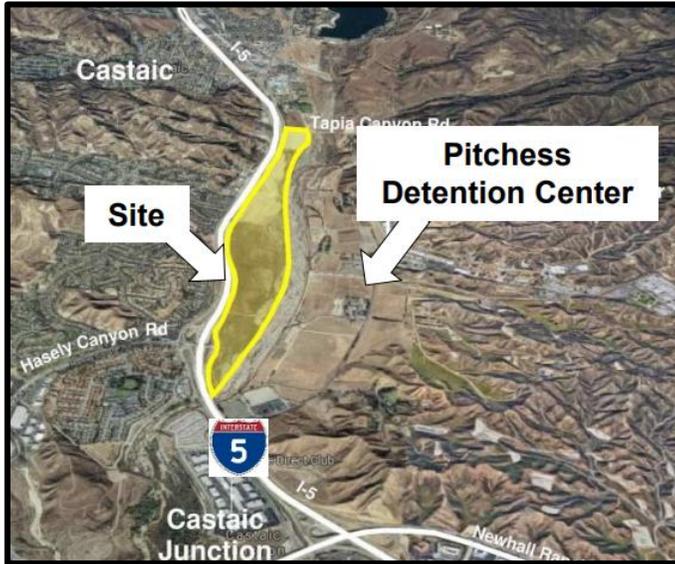
# SLA Compels Cities to look at Property Assets Strategically

SLA is having a profound impact on a public agencies' decision-making process to sell or lease public-private projects. Cities need to act strategically and proactively to get the most out of their property assets.

1) Know Your Portfolio	2) Know Your Priorities	3) Know Your Strategies
<p>Understanding your agency's property portfolio is key</p> <p>Perform due diligence and prioritize potential portfolio of properties contemplated for disposition and/or development</p>	<p>Consider the variety of economic development priorities that you can use your properties to pursue:</p> <ul style="list-style-type: none"><li>• Housing</li><li>• Civic/Public amenity purposes</li><li>• In conjunction with private projects</li><li>• Other uses</li></ul> <p>Do you want to keep the property for public use or put into private service?</p>	<p>Make a strategic determination of which properties to keep or sell.</p> <p>Agencies can use a variety of strategies to increase market/reuse value of its land &amp; comply with the SLA</p> <p>Be sure to consider CEQA / Entitlements &amp; RHNA</p> <p>Align these property strategies with other economic development tools / approaches</p>

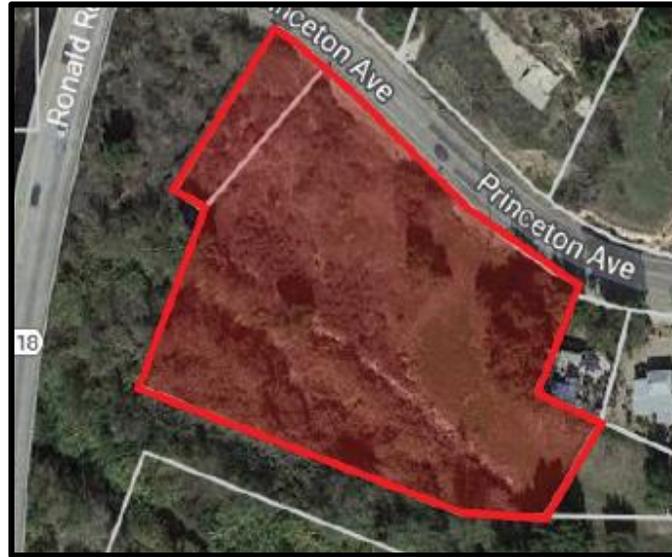
# SLA Challenges - Unique to Each Public Agency

*Each Public Agency needs to devise a real estate disposition strategy that considers its own economic development priorities in light of SLA.*



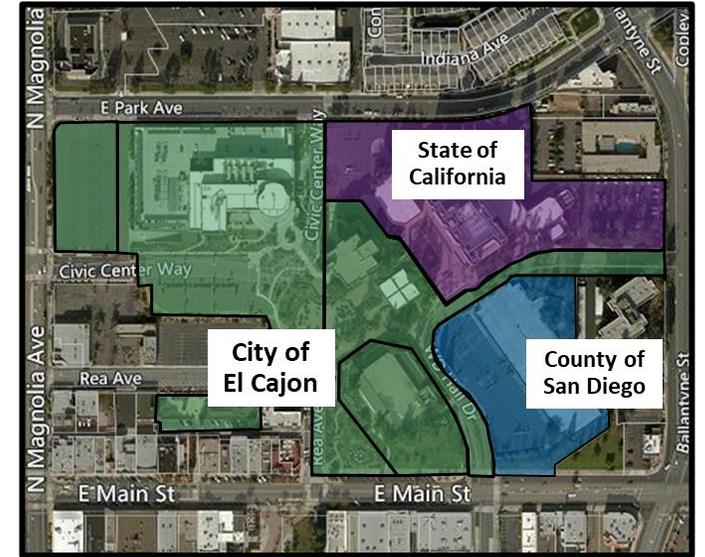
## County of Los Angeles

- +/- 200 Acre Property
- Zoning: Heavy Agriculture
- \$229M flood risk mitigation, Adjacent to Detention Center
- **SLA Status:** Process completed, HCD certified, property brought to market via RFP



## Moorpark Successor Agency

- +/- 1.8 Acre Property
- Zoning: Industrial
- Adjacent to Floodplain, Liquefaction issues
- Pre-Existing Agreement with Developer
- **SLA Status:** Under City review



## City of El Cajon

- +/- 20 Acre Property
- Zoning: Commercial, Downtown Master Plan
- Complex Civic Center Revitalization; County/State owners/users
- Reuse program requires public uses
- **SLA Status:** City reviewing alternatives

# What Needs to Get Done in Your Community?

**How do I add housing, comply with RHNA, & address density?**

**How do I fix regional shopping centers and retail corridors ?**

**How do I replace sales tax?**

**How do I revitalize downtown?**

**How do I meet these escalating state requirements?**

**How do I meet the needs of today and prepare for the future?**

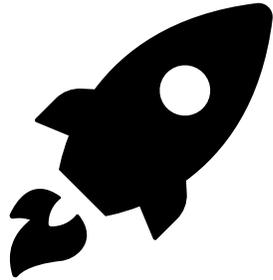
***How do I pay for constituent service demands?***

# Primary Steps to Comply with SLA & Pursue Projects

- 1 Property Inventory (*Start Early*)**  
*Identify priority properties and/or projects now that may be impacted by SLA & can be put into productive use.*
- 2 Prioritize, Screen, & Select an Approach**  
*Confirm value, SLA applicability, Preferred Disposition Strategy/Use (e.g., asset monetization, public use, housing, etc.), Econ Dev Tools, & Financing Mechanisms.*
- 3 Implementation (*Transparency is Key*)**  
*Execute preferred disposition (sale, lease, etc.) strategy that's done openly & fulfills community goals and objectives (job creation, tax revenues, housing)*

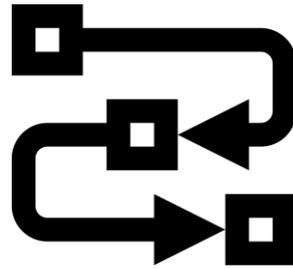
# Post COVID Economy: Opportune Time to Use Real Estate Tools

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



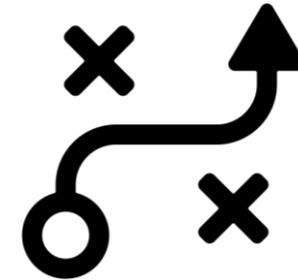
## SLA Taking Off

New rules being used for property disposition and housing creation



## New Processes

Cities navigating evolving procedures and compliance



## New Strategies

Cities using property assets strategically to pursue priorities

### *Today's Program*

**Laura Nunn** will provide insights re HCD's compliance & implementation

**Jim Vanderpool** will explain the City of Anaheim's SLA approach

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



HCD's Insights regarding SLA Implementation – Laura Nunn

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

City Managers Conference

Carlsbad, CA

February 9, 2023





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

- Provide more affordable housing options in all parts of the state
- Cities, counties, and special districts have land that can reduce cost barriers to housing development
- SLA requires local agencies to make land available for affordable housing before selling or leasing the land for another purpose



# Successes



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

As of 1/25/2023, HCD has received:

- 509 exempt surplus land declarations
- 216 full dispositions
- Overwhelming majority have been approved

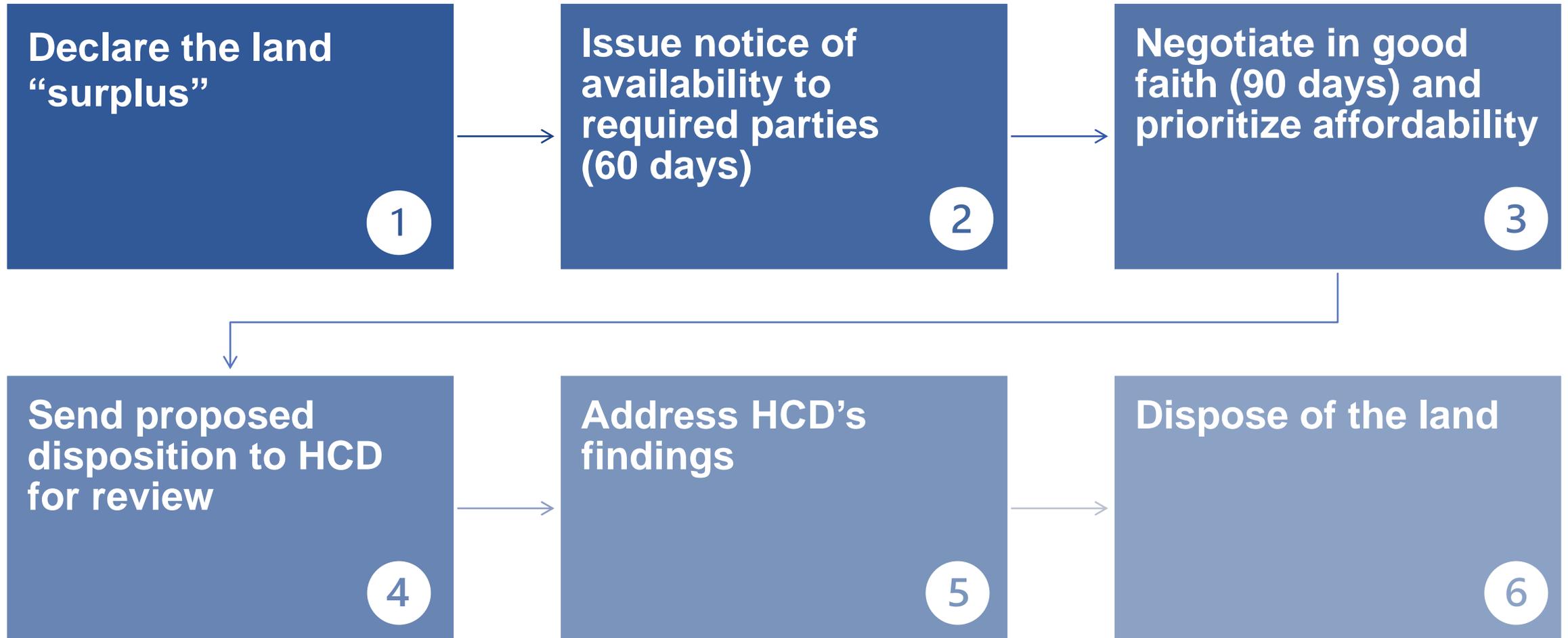


## Successes

- The SLA is helping to create housing!
- Through the SLA, HCD has approved dispositions as of 1/25/2023 proposing:
  - **7,778 housing units (5,627 affordable)**
- These new homes help jurisdictions and the state meet their housing goals (Regional Housing Need Allocations)



# Standard SLA Process for Surplus Land





# Declaring property as “Exempt Surplus”

## “Grandfathering”

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

1

## Land for Affordable Housing

Must meet certain criteria in the SLA

2

### Exemptions from standard SLA process

*Still requires HCD review and other requirements*

## Land dedicated for other public uses

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

3

## Land not suitable for housing

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

4



# Other Cases that Lie Outside the Scope of the SLA

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

## 1. Short-term leases

- Land leases for a term of less than five years

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

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



# Tips and Best Practices for Local Agencies

Develop basic in-house familiarity with the SLA

Survey and catalogue the potential surplus properties

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

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



# How can HCD help? – Technical Assistance

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



# Updates and Resources Available

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

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

## Contact us

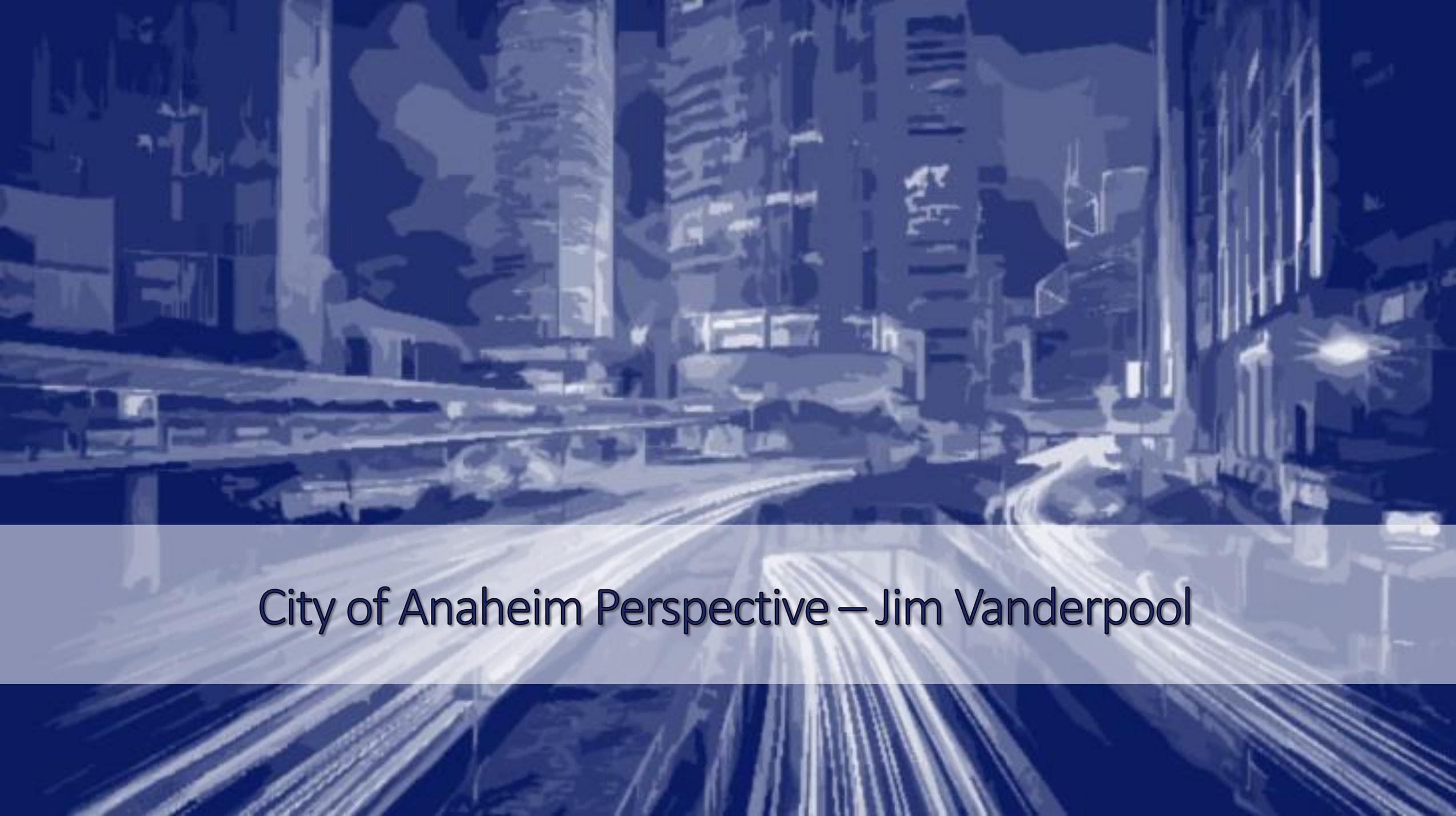
- For requests for technical assistance, email [publiclands@hcd.ca.gov](mailto:publiclands@hcd.ca.gov)
- To report potential violations, email [compliancereview@hcd.ca.gov](mailto:compliancereview@hcd.ca.gov)



# Other Updates

## Legislative interest in SLA

- 8 SLA bills last year
- 8 SLA bills in 2021
- Total of 16 SLA bills during last legislative session
- Chaptered bills include:
  - SB 791 to create the Surplus Land Unit
  - AB 1180 to add federally qualified California Indian Tribes to the list of local agencies to which land can be transferred to qualify for “exempt surplus land”

A blue-tinted, long-exposure photograph of a city street at night. The image shows light trails from traffic and illuminated buildings, creating a sense of motion and urban activity. The perspective is from a low angle, looking down the street. The text "City of Anaheim Perspective – Jim Vanderpool" is overlaid on the lower half of the image.

City of Anaheim Perspective – Jim Vanderpool



# Surplus Land Act

Feb. 9, 2023

# Beach Boulevard

## Where

Southeast corner of Beach Boulevard and Lincoln Avenue

## Size

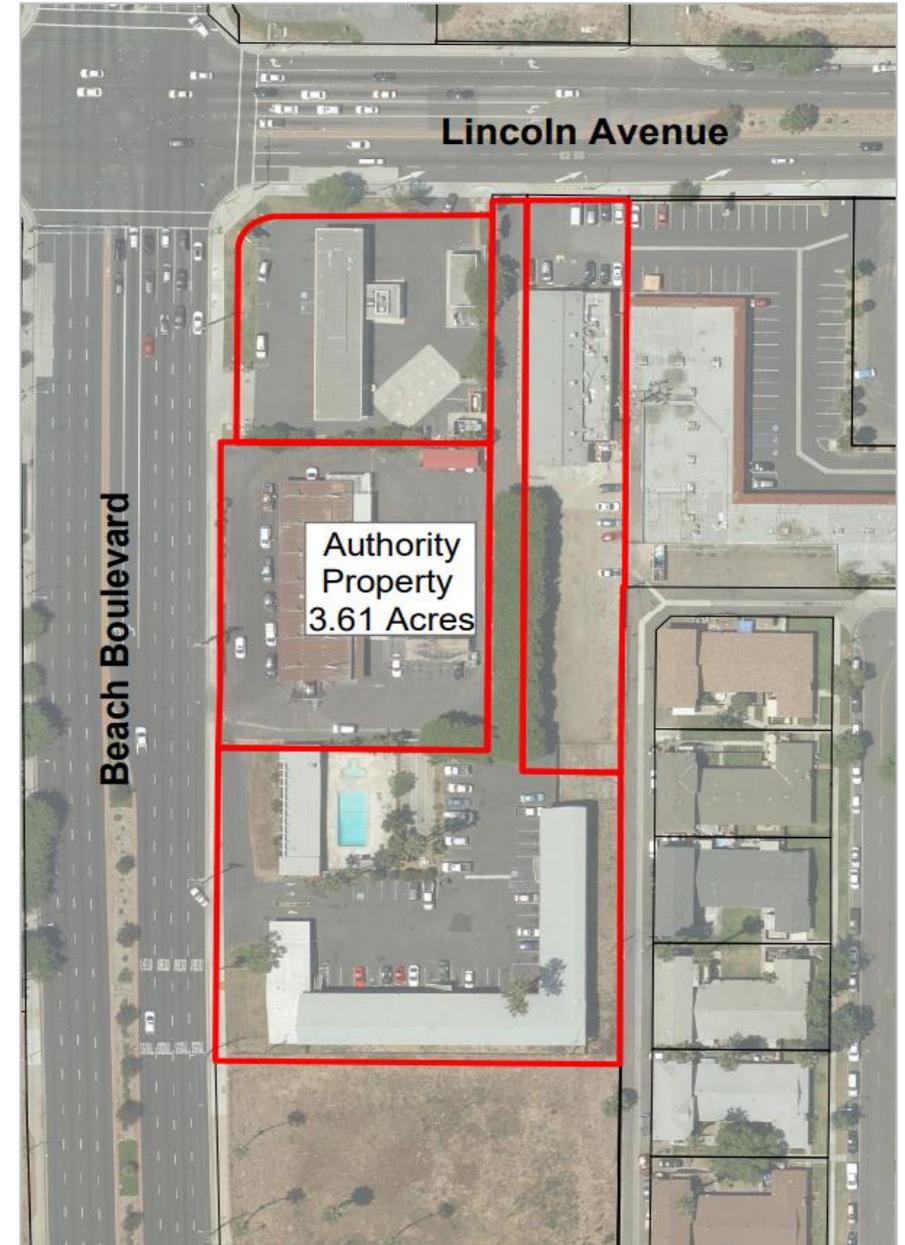
3.61 acres, four parcels

## Development plan

Affordable apartments, townhomes for sale, corner retail

## Process

- **December 2017:** City begins acquisition process
- **October 2019:** Surplus Land Act updated
- **December 2019:** City acquisition closes
- **October 2021:** City declares site surplus land
- **Early 2022:**
  - 60-day notice of availability
  - Review of notice of intent
  - Negotiations with developer
- **Today:** City awaiting final HCD confirmation



# “Woody” Site

## Where

1501 W. Lincoln Ave. at Manchester Avenue, known as the “Woody” site

## Size

3 acres

## Development plan

Commercial

## Process

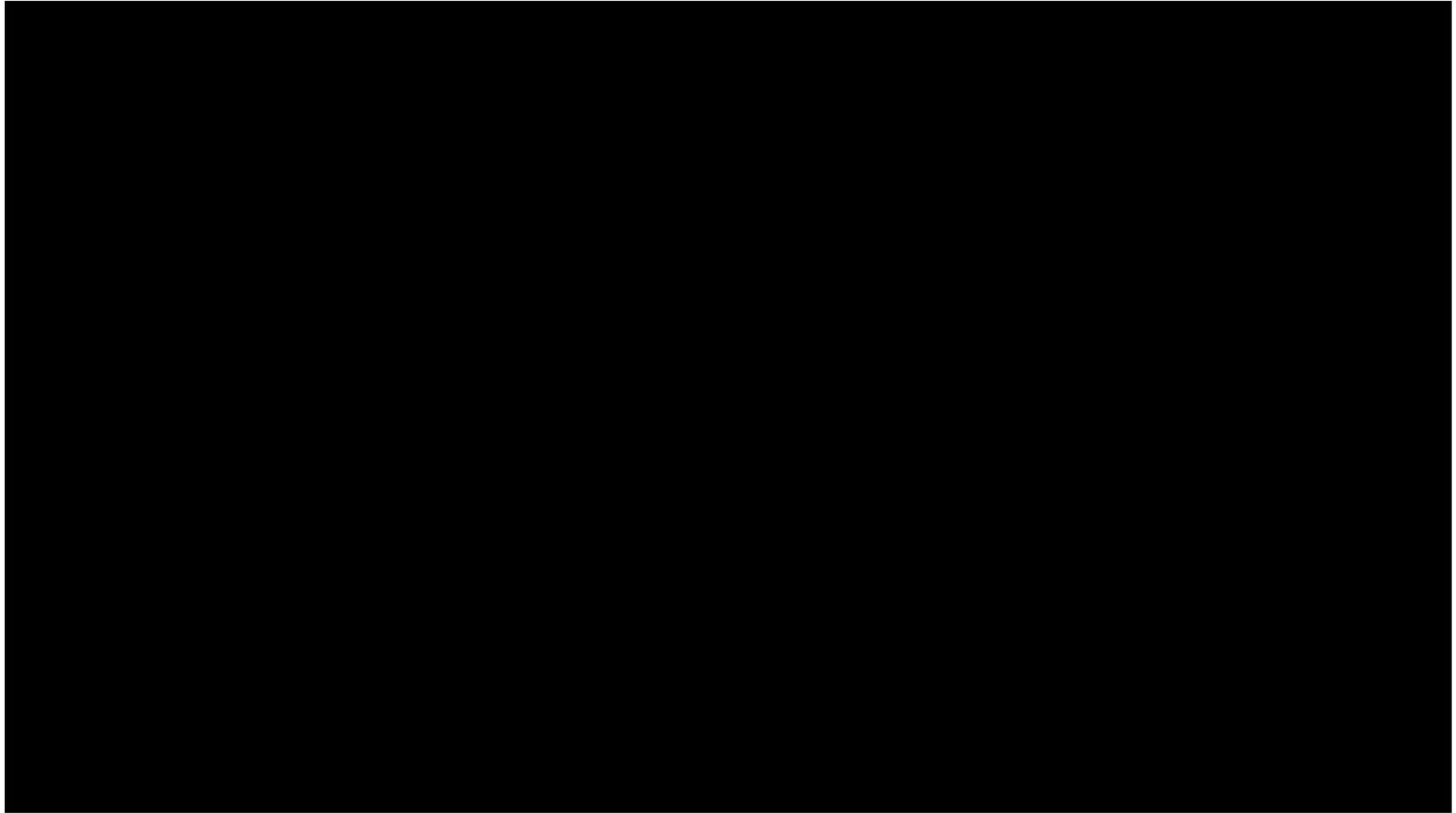
- Property declared surplus land
- Notice of availability issued
- No responses received
- City requested HCD letter of compliance
- HCD confirmed compliance

## Background

Property unsuitable for affordable housing with freeway proximity, configuration and other issues



# Angel Stadium of Anaheim



# Angel Stadium of Anaheim

## Size

151 acres

## Development proposal

Renovated or new stadium, homes, offices, restaurants, shops, entertainment, hotels, parks

## Timeline

- **Late 2019:** Negotiations
- **December 2019:** Initial purchase and sale agreement
- **2020:** Negotiations on Development Agreement, amended PSA, other agreements
- **September, October 2020:** all agreements approved
- **April 2021:** preliminary HCD letter, City disagrees with application of Surplus Land Act
- **December 2021:** HCD issues Notice of Violation
- **April 2022:** Settlement Agreement between state, Anaheim
- **May 16, 2022:** Details of federal investigation emerge
- **May 23, 2022:** Then Mayor Sidhu resigns
- **May 24, 2022:** Anaheim declares 2020 PSA agreement void



# Takeaways

**Opportunity  
Costs**

Consider Them

**Worthwhile  
Exchange**

Seek with HCD

**Procedure  
and Process**

Very Important

**SLA  
Process**

Start Early, Not Later

**Understand  
Risks**

They Are There



# SLA Key Compliance Aspects and Processes – Matthew Cody



# Key Compliance Aspects and Processes

# Questions we've been hearing

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

# Property declared surplus pre-AB 1486

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

# Notice of Availability

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

# Negotiation Latitude

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

# Ending Negotiations

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

# What else do I need to think about?

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

# What else do I need to think about?

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

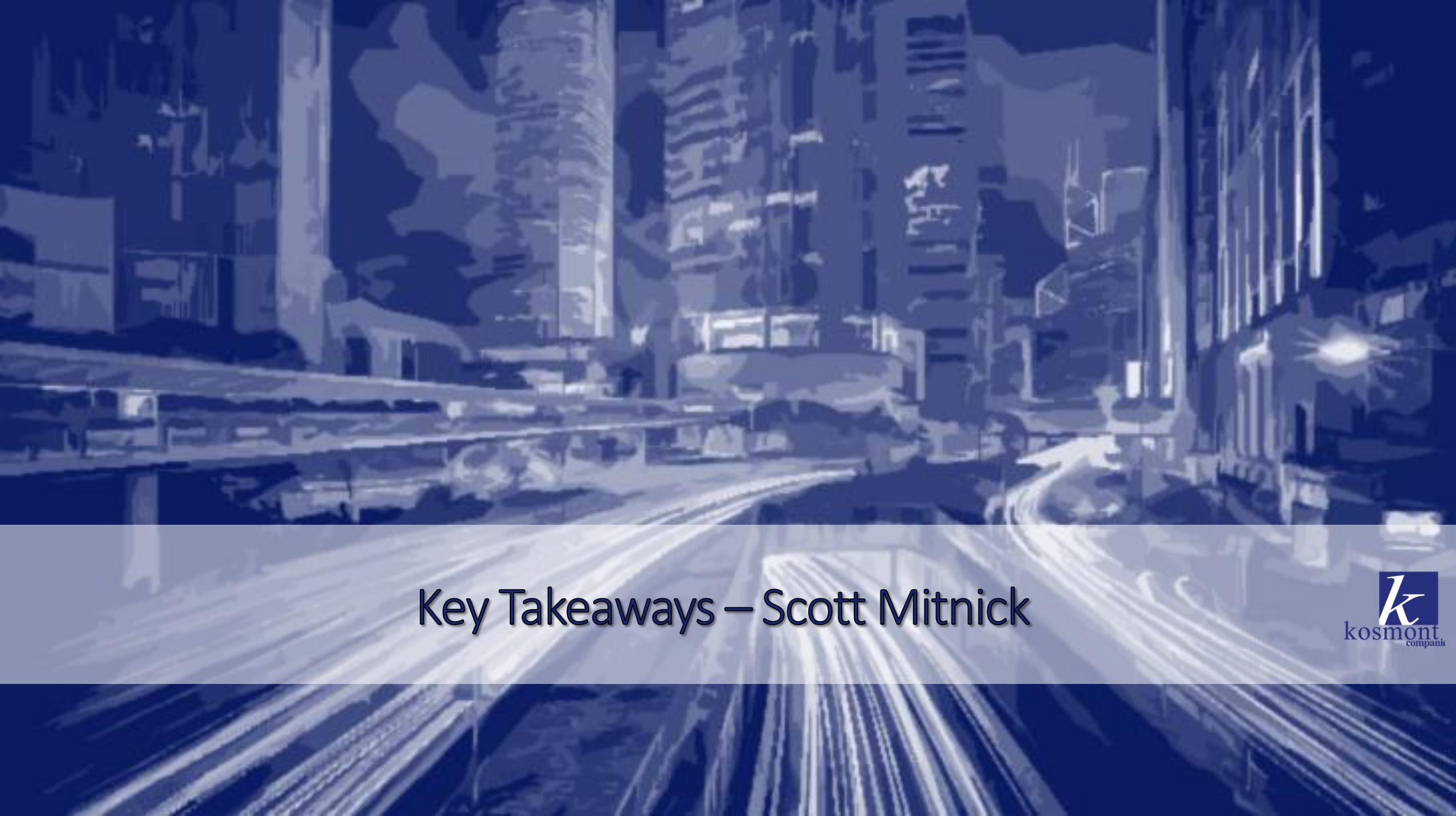


Questions?

Matthew Cody

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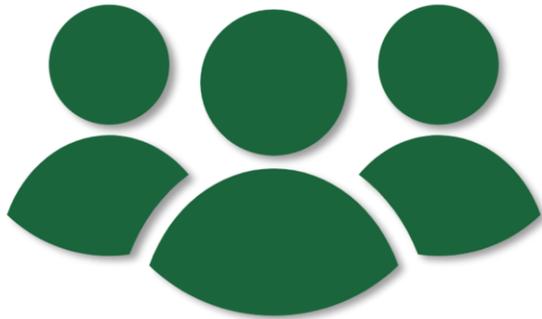
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# Key Takeaways – Scott Mitnick

# The Great Reconfiguration

*Challenges of a New Policy Mindset and a Changing Economy*



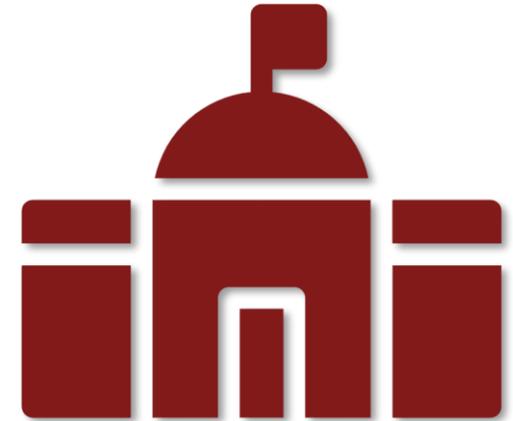
**Consumers** driven by quality of life, cost of living and housing, amenities, essentials, and experiences

*Want it all in a 15-Minute Community*



**Investors** driven by new technology, shifting demand, supply chain anomalies, and new live / work patterns

*Seeking value from new demand drivers*



**City Hall** driven by resident and employer needs & new state policies which seek to install housing

*Tension: Comply with state priorities vs. achieving community priorities in a post covid digital world (RHNA, Density Bonus, SLA)*

# What's Next For SLA? Key Takeaways

- Future cleanup legislation is coming and will likely tighten SLA compliance and enforcement
- Cities should start NOW to review and evaluate their property portfolio in alignment with economic development goals and objectives
- SLA is nuanced and circumstantial. Engaging HCD early in process of disposition is important to future determination of compliance
- Transparency is key – reposition and promote the City's asset program to the local community to achieve HCD compliance

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

## Questions?



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