



2023 Key Surplus Land Act Legislative Analysis

SB 747 (Senator Anna Caballero) and AB 480 (Assembly Member Philip Ting)

The California Association for Local Economic Development (CALED) is the voice of economic development practitioners and stakeholders. With over 800 members, CALED is one of the largest economic development associations in the country. We are pleased to share this update on where things stand on the two major Surplus Land Act (SLA) bills that we engaged heavily on in the 2023 Legislative Session – SB 747 (Senator Anna Caballero) and AB 480 (Assembly Member Philip Ting).

Update on where things stand on the major SLA legislation in the 2023 Legislative Session:

A comprehensive agreement has been reached between the authors of SB 747 (Senator Anna Caballero) and AB 480 (Assembly Member Philip Ting) which is represented in the language of these bills, as each came into print in amended form on Friday, September 8. Both bills are expected to pass and be sent to the Governor before the Legislature adjourns Friday, September 15, 2023.

The final versions of these bills result from extensive negotiations over the last several months and CALED commented extensively on the various drafts. These bills are also “double-joined,” which means that neither bill will take effect unless the Governor signs both bills into law, but the Governor’s signing order of the bills will impact two provisions identified in a footnote at the end of this document.

CALED appreciates the work of Senator Anna Caballero and her staff in working with CALED on SLA issues over the last two legislative sessions, including last year holding AB 2357 (Ting) in her Senate Committee. This year she authored SB 747, which CALED helped shape, and significantly narrowed the scope of AB 480 (Ting).

While the legislative road for SB 747 has been bumpy, and there is more work on the SLA to be done, I think you will agree that this year’s final outcome – while not giving us everything that we would want – is positive in offering additional flexibility for local agencies.¹

To help you understand how these bills work together, we have summarized the changes in the following order:

- 1) Contents amended into Section 1.5 of both bills. Both bills contain the identical changes to Section 54221. The Governor must sign both bills or neither takes effect.
- 2) Additional Changes to other SLA Sections Contained in SB 747.
- 3) Additional Changes to other SLA Sections contained in AB 480.

Changes Contained in Section 1.5 of Both Bills (Sec. 54221):

- 1) **Administrative Declaration:** Authorizes local agencies, following a 30-day notice, to administratively declare certain categories of parcels as “exempt surplus land.” (rather than at a public hearing). This offers additional flexibility.
- 2) **Agency Use Exemption:** Adds several new categories of parcels determined to be “agency use:” sites for broadband equipment and wireless facilities, port-owned property used to support logistics, and buffer sites to waste disposal facilities.
- 3) **Lease Exemption:**
 - a. Exempts leases of surplus land for 15 years or less, inclusive of renewal options, entered into after January 1, 2024.
 - b. Exempts leases of surplus land of any term where no demolition or development will occur.

¹ Several other SLA-related bills, including bills which propose specific exemptions for individual local agencies, also remain pending. CALED will also soon distribute a comprehensive summary of all other SLA-related pending or enacted legislation for the 2023 Session.

4) Expansion of “Exempt Surplus Land” Categories:

- a. Small Parcel Exemption: Replaces the existing narrow exemption for small parcels with a broader exemption for all parcels up to ½ acre that are *not* contiguous to parcels owned by a state or local agency used for open space or low or moderate income housing.
- b. Land Exchange Exemption: Clarifies that when a local agency is exchanging surplus land for another property, it includes “easements necessary for the agency’s use.”
- c. Transfer to Other Public Agencies: Authorizes surplus land to be transferred to another state, federal, or local agency to be transferred to a “third party intermediary” for future dedication for the receiving agency’s use. The receiving agency’s use is required to be contained in a legally binding agreement at the time of transfer to the third party intermediary.
- d. Affordable Housing Exemption: Applies to 100 Percent Affordable (Low/Mod) Projects, of which 75 percent must be reserved for lower income.
 1. Exempts these projects from the requirement that they must first notice all SLA interested parties and be competitively bid, thus granting a clean exemption from the SLA for these projects.
 2. Requires a 50-year affordability restriction for rental or ownership housing located on tribal trust lands.
 3. Requires all affordability covenants to be contained in recorded enforceable covenants.
- e. Mixed-Use Exemption: Expands the exiting exemption provided to noticed/competitively bid mixed-use projects more than one acre which contain more than 300 residential units (of which at least 25 percent are restricted to lower income households) as follows:
 1. Allows the mixed-use project with 300 or more residential units to be on one or more adjacent or non-adjacent parcels totaling up to 10 acres combined.
 2. For the development of parcels totaling more than ten acres (pursuant to a plan adopted by a local agency or a state statute), requires the greater of 300 residential units, or 10 times the number of acres of surplus land, up to a total of 10,000 units. *(For example, 50 acres would require 500 residential units, of which 25 percent must be available for lower income households).*
 3. Requires a 50-year affordability restriction for rental or ownership housing located on tribal trust lands.
 4. Requires all affordability covenants to be contained in recorded enforceable covenants.
- f. New Rural Mixed-Use Exemption: Adds a new exemption for mixed-use projects not located in urbanized areas, where 25 percent of units are dedicated to lower income households, and at least 50 percent of the new construction associated with the development is dedicated to residential use.
- g. New Community Land Trust Exemption: Adds a new exemption for lands dedicated to a community land trust for housing developments that meet specified conditions.
- h. New Airport Exemption: Adds a new exemption for lands owned by a California public use airport on which residential uses are prohibited pursuant to a specific Federal Aviation Administration order.
- i. New Transportation/Transit Agency Property Development Exemption: Adds a new exemption which allows transportation/transit agencies to use surplus land for commercial, industrial, retail, office and other uses, if they have adopted a plan to dedicate 50 percent of gross acreage covered by the plan to residential uses and at least 25 percent of the residential units are reserved for lower income households. Additional related conditions apply.
- j. Educational Agency Property Exemption: Clarifies that surplus lands of educational agencies which are listed under specific sections of the Education Code listed in Sec. 54221 are exempt, unless compliance with the SLA is expressly required.
- k. Valid Legal Restrictions: Provides additional clarity on the types of “valid legal restrictions” which may prevent the use of a surplus parcel for housing.

Additional Changes Contained in SB 747 (Caballero):

Sec. 54222.

- 1) Requires the Department of Housing and Community Development (HCD) to maintain a listing and link to all entities, including housing sponsors, that local agencies are required to notify.
- 2) Provides additional clarifications on actions by local agencies that are not considered “participating in negotiations.”
- 3) Reinforces the scope of the SLA to be limited to the existing definitions of “surplus land” and “exempt surplus land” by removing confusing references to “land.” Makes other clarifying changes.

Sec. 54222.5. Makes minor helpful clarifying changes, and includes a provision requiring 50-year affordability covenants on units placed on tribal trust lands.

Sec. 54223, 54224, and 54225. Makes minor helpful clarifying changes.

Sec. 54226. Technical. Consolidates existing statutory limitations applicable to the scope of the SLA into a single section.

Sec. 54227. Minor, clarifying change.

Sec. 54230. Deletes existing law which exempts HCD from compliance with the Administrative Procedures Act when adopting or repealing standards, forms, definitions related to local agency inventories of surplus lands. Makes another minor, clarifying change.

Sec. 54230.5. Penalties Provision:

- 1) Changes references to “final sale price” to “final disposition value.” Defines final disposition value as:
 - a. For a sale, the greater of the sales price, or fair market value of the land at time of sale, as determined by an independent appraisal.
 - b. For a lease, the discounted net present value of the fair market value of a lease, as determined by an independent appraisal.
- 2) Prohibits penalties from applying to nonsubstantive violations that do not impact:
 - a. the availability and priority of, or
 - b. the construction of housing affordable to low income households, or
 - c. the ultimate disposition of the land, such as clerical errors.
- 3) Removes the sentence in existing law that exempts HCD guidelines implementing this Section from the Administrative Procedures Act.

Additional Changes Contained in AB 480 (Ting):

Sec. 54222. Provides clarifications, including on actions by local agencies that are not considered “participating in negotiations.” Identical to SB 747.

Sec. 54222.5. Makes minor helpful clarifying change, and includes a provision requiring 50-year affordability covenants on units placed on tribal trust lands. Identical to SB 747.

Sec. 54223, 54224, and 54225. Makes minor helpful clarifying changes. Identical to SB 747.

Sec. 54226. Technical. Consolidates existing statutory limitations applicable to the scope of the SLA into a single section. Identical to SB 747.

Sec. 54227. Minor, clarifying change. Identical to SB 747.

Different Provisions in AB 480 (Ting):

Sec. 54230. Makes a minor, clarifying change, Identical to SB 747, but **does not**² delete a provision of existing law which exempts HCD from compliance with the Administrative Procedures Act when adopting or repealing standards, forms, definitions related to local agency inventories of surplus lands.

² The differences between Sections 54230 and 54230.5 contained in SB 747 and AB 480 come down to a disagreement between the authors on whether HCD’s regulations and guidelines to implement these sections should continue to be exempt from the Administrative Procedures Act (APA). Senator Caballero believes that such actions should not be exempted from the APA, and thus proposes to strike related provisions of existing law. Assembly Member Ting, however, makes no such changes in his bill. This issue will be settled by the Governor’s signing order for the bills. If he signs AB 480

Sec. 54230.5. Penalties Provision: Identical language changes as made by SB 747 to this section, with the exception being that it does not remove the sentence in existing law that exempts HCD guidelines implementing this Section from the Administrative Procedures Act.

Sec. 54234. *(Only included in AB 480)*³ Revises a provision of existing law which required parcels subject to an exclusive negotiation agreement entered into prior to September 30, 2019, to be disposed of by December 31, 2022, with an extended deadline of December 31, 2024 for certain parcels in the City of Los Angeles. The revised version extends the deadline to dispose of any parcels subject to a pre-September 30, 2019 agreement to December 31, 2027, and prescribes a process for reviving a previously terminated agreement.

Thank you to the team:

This was a significant team effort, and it started with the CALED Board of Directors and Advisors investing in an effort to address the number one issue members identified as a significant impact on their ability to deliver effective economic development – challenges with the Surplus Land Act. We are grateful to Dan Carrigg for his hard work in leading our work on this. Thank you to Board Members Kendall Levan, Rafael Yaquian, Jennifer McLain Hiramoto, and Aaron Laurel for their assistance.

And, thank you to all of you – CALED members and partner organizations – that provided letters of support and opposition as needed to help us fight for economic development!

What's Next:

When these bills have moved to the Governor's desk, we will need letters of support for his signature on both bills. Please watch for that call to action and submit your letters.

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last, then AB 480's version of these sections (which preserve status quo re exemption for HCD reg and guidelines from the APA) will remain in the law.

³ The proposal to extend this deadline was originally included as a proposal in SB 747, but was removed by Committee Amendments in the Assembly Local Government Committee. It is now back in revised form, but only included in AB 480. This provision is not affected by the Governor's signing order.