



# California Association for Local Economic Development

## Primer on 2023 Surplus Land Act Legislation

*November 10, 2023*

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 final summary of the following 2023 Surplus Land Act (SLA) bills that CALED was heavily engaged on in the 2023 Legislative Session, including:

### Major Bills:

1. SB 747 (Caballero) & AB 480 (Ting) Major SLA Changes
2. SB 229 (Umberg) Public Hearing/Notice of Violation
3. SB 34 (Umberg) Orange County & OC Cities. Notice of Violation

### Special Exemption Bills:

AB 129 (Budget) Sectional Planning Area (Effective July 10, 2023)

4. AB 1734 (Jones-Sawyer) City of LA: Homeless
5. AB 1469 (Kalra) Santa Clara Valley Water District: Unsheltered Individuals/Agency Use

### Overview of Political Dynamics:

The outburst of SLA legislation in 2023 resulted from pressure building over several years. AB 1486 (Ting), of 2019, and subsequent HCD guidelines, empowered the Department of Housing and Community Development (HCD) as a gatekeeper vetting the disposal of thousands of parcels of public property of cities, counties and special districts. These local agencies faced confusion and uncertainty over which parcels were subject to the law, and HCD could levy fines of 30 to 50 percent of the sales price for violations. At a minimum, local agencies seeking to dispose of property faced months of delay.

After a period of relative calm during the COVID pandemic, local/state SLA tensions resumed in the Legislature in 2022. AB 2357, introduced by Assembly Member Phillip Ting, sought to solidify HCD's power over the SLA, and Orange County Senator Tom Umberg introduced several bills responding to an FBI probe over a proposed property disposal adjacent to Angels Stadium that led to the resignation of Anaheim's mayor. CALED and other local agencies strongly opposed the expansion of HCD authority in AB 2357 and raised concerns with aspects of the Umberg bills that limited authority of all agencies based on a proposed project that was not moving forward. Senator Anna Caballero, a former mayor, who chairs the Senate Governance and Finance Committee, was receptive to local agency concerns and held AB 2357 in her committee, and the Umberg bills also stalled.

With the Ting/Umberg bills anticipated to return in 2023, CALED elected to play offense and worked with Senator Caballero to develop a set of comprehensive SLA reforms introduced in her SB 747. As expected, Assembly Member Ting and Umberg reintroduced their bills, and—reflecting the growing frustration of local agencies with the SLA—other legislators introduced six special exemption bills.

Senator Caballero occupied a pivotal position in these discussions since all SLA bills had to pass through her Senate Governance and Finance Committee. In addition, the introduction of SB 747 elevated SLA policy issues with her colleagues on the committee and provided helpful contrast to the Ting/Umberg proposals. Moreover, the existence of six other special exemption proposals highlighted the need for broader reforms. Yet, it was also evident that final outcomes would depend on negotiations, since SB 747 had to also pass through the Assembly and be signed by the Governor.

As expected, SB 747 was significantly narrowed along the way, and AB 480 was heavily amended in Senator Caballero's Committee. Negotiations between the authors resulted in a final agreement that made the bills somewhat identical. Senator Caballero also insisted on a "contingent enactment" clause, meaning the Governor had to sign both bills, or neither would take effect. Because the Governor signed (chaptered)



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AB 480, after signing SB 747<sup>1</sup>, it means that the language in AB 480 is cited as the final version. Still, local agencies should be mindful that without Senator Caballero's SB 747, and the contingent enactment leverage, most provisions helpful to local governments would not have made it into law.

## AB 480's SLA Changes<sup>2</sup>:

- a) **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 logistic uses, and buffer sites for waste disposal facilities. *Sec. 54221 (c)(1)*
- b) **Lands Eligible for Administrative Declaration:** Authorizes local agencies, with a 30-day [Sec. 54222(a)] notice, to administratively declare (*rather than at a public hearing*) certain categories of parcels as "exempt surplus land." Eligible properties:
  - i. Small parcels less than 1/2 acre, which are not contiguous to land owned by a state or local agency used for open space or low and moderate income housing purposes.
  - ii. Surplus land that is a former street, right of way, or easement and is conveyed to the owner of adjacent land.
  - iii. Surplus land granted in trust by the state to a local agency, or was acquired by a local agency for trust purposes, and for which disposal of the land is authorized or required subject to conditions established by statute.
  - iv. Lands owned by a California public use airport on which residential uses are prohibited pursuant to a specific Federal Aviation Administration order.
  - v. Parcels disposed of by a county or city for affordable housing consistent with Gov. Sec. 25539.4 or 37364. (These are antiquated 1988 statutes: requiring 40% of units to be equal or less than 75% of maximum income for lower income households, half of which shall be affordable to very low income households)
  - vi. Land subject to specific sections of the Education Code, or used for teacher housing. *Sec. 54221(b)(4)*
- c) **Leases:** Defines "disposal" to include either the sale or lease of surplus land, but exempts the following two categories of leases:
  - i. Leases of surplus land for 15 years or less, inclusive of extension or renewal options.
  - ii. Leases of surplus land on which no demolition or development will occur, regardless of the term of the lease. *Sec. 54221(d)*
- d) **Small Parcel Exemption:** Replaces the existing narrow exemptions for small parcels with a broader exemption for all parcels less than 1/2 acre that are not contiguous to parcels owned by a state or local agency used for open space or low or moderate income housing. *Sec. 54221 (f)(1)(B)*
- e) **Land Exchange Exemption-Easements:** Clarifies that when a local agency is exchanging surplus land for another property necessary for the agency's use, that "property" includes easements necessary for the agency's use. *Sec. 54221 (f)(1)(C)*
- f) **Transfer to "Third Party Intermediary:"** Authorizes surplus land to be transferred by a local agency to another state, federal, local agency, or to a "third party intermediary" for future dedication for the receiving agency's use, or to a federally recognized California Indian tribe. 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. "Third party intermediary" is not defined in this legislation. *Sec. 54221 (f)(1)(D)*
- g) **Affordable Housing Exemption:** Exempts 100 % (low/mod) 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. Requires 75 % of units to be reserved for lower income, and allows projects to have commercial ground floor ancillary uses. Requires a 50-year affordability restriction for rental or ownership housing located on tribal trust lands, and all

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<sup>1</sup> SB 747, CH 786, of 2023.

<sup>2</sup> AB 480, CH. 788, of 2023.

- affordability covenants (*including standard terms 55-yr rental/45-yr ownership*<sup>3</sup>) to be contained in recorded enforceable covenants. *Sec. 54221 (f)(1)(F)*
- h) **Expanded Housing/Mixed-Use Exemption:** Expands the existing exemption provided to noticed/competitively bid housing/mixed-use projects on surplus land which contain not less than 300 residential units (*of which at least 25 % are restricted to lower income households*) as follows:
- Projects can be on a parcel of more than one acre, or on two or more adjacent or non-adjacent parcels, totaling *less than* 10 acres, combined.
  - All entities required to be noticed under Section 54222(a) must be noticed and invited to participate in the process.
  - Requires all affordability covenants to be contained in recorded enforceable covenants, and a 50-year affordability restriction for housing on tribal trust lands. *Sec. 54221 (f)(1)(G)*
- i) **Housing/Mixed-Use Exemption (10+ Acres):** Adds a new exemption category for the development of surplus land totaling ten or more acres requires the greater of either: (i) 300 residential units, or (ii) a number of residential units equal to 10 times the number of acres of surplus land, or 10,000 units, whichever is less. (25% of units must be affordable to lower income households)
- Project can be on a single parcel, or two or more adjacent or non-adjacent parcels, combined for dispositions to one or more buyers, pursuant to a plan or ordinance adopted by the legislative body of the local agency, or a state statute.
  - If non-residential development is included in the project, then development of affordable units must occur concurrently. At least 25 % of the total affordable units must be available for occupancy for each 25 % increment of non-residential development available for occupancy.
  - Requires all affordability covenants to be contained in recorded enforceable covenants, and 50-year affordability restrictions for housing on tribal trust lands.
  - Project must be noticed and competitively bid.
  - Specific penalties apply for violations of this section. *Sec. 54221 (f)(1)(H)*
- j) **Rural Mixed-Use Exemption:** Adds a new exemption for mixed-use projects not located in urbanized areas. Project may be located on one or more publicly-owned parcels, and at least 50 % of new construction associated with the development must be dedicated to residential use. Twenty-five percent of units must be reserved for lower income households, and a 50-year affordability restriction is required for housing located on tribal trust lands. *Sec. 54221 (f)(1)(I)*
- k) **Airport Exemption:** Adds a new exemption for lands owned by a California public use airport on which residential uses are prohibited pursuant to this Federal Aviation Administration order 5190.6B, Airport Compliance Program, Chapter 20 -- Compatible Land Use and Airspace Protection. *Sec. 54221 (f)(1)(Q)*<sup>4</sup>
- l) **Transportation/Transit Agency Property Development Exemption:** Allows transportation/transit agencies to use surplus land for commercial, industrial, retail, office and other “nongovernmental” uses, if they have adopted a plan to dedicate 50 % of gross acreage covered by the plan to residential uses, provided that:
- At least 300 units must be constructed, averaging at least 10 units per acre, of which at least 25 % of the residential units must be reserved for lower income households.
  - Additional related conditions apply. *Sec. 54221 (f)(1)(S)*

<sup>3</sup> Note: There is an inadvertent drafting error in several housing-related sections, which eliminated the 45-year affordability covenants for ownership projects. The authors have committed in letters to the Assembly Journal to address this error in 2024’ clean-up legislation. HCD is also aware of this error.

<sup>4</sup> Those with public airports, should also review SB 654 (Jones), Ch. 155, of 2023, (a non-SLA bill) which provides several clarifications related to leasing airport property.

- m) **Community Land Trust Exemption:** Adds a new exemption for lands transferred to a community land trust for housing developments that meet specified conditions. *Sec. 54221 (f)(1)(R)*
- n) **Educational Agency Property Exemption Clarification:** Clarifies that surplus lands of educational agencies under specific sections of the Education Code are exempt, unless compliance with the SLA is expressly required. *Sec. 54221 (f)(1)(L)*
- o) **Valid Legal Restrictions Clarifications:** Provides additional clarity on the types of valid legal restrictions supported by “documentary evidence” which may prevent the use of a surplus parcel for housing, including:
  - i. Existing constraints under ownership rights or contractual rights or obligations that prevent the use of the property for housing, if rights/obligations were agreed to before September 30, 2019.
  - ii. Existing leases, or other contractual obligations or restrictions, if the terms were agreed to prior to September 30, 2019.
  - iii. 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:
    - A. The restrictions limit the use of those funds to purposes other than housing.
    - B. The proposed disposal of surplus land meets a use consistent with that purpose.
  - iv. Provides that valid legal restrictions that would make housing prohibited do not include either of the following:
    - A. An existing nonresidential land use designation on the surplus land.
    - B. 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.
  - v. Provides that feasible methods to mitigate or avoid a valid legal restriction on the site do not include a requirement that the local agency acquire additional property rights or property interests belonging to third parties. *Sec. 54221 (f)(1)(J)*
- p) **Changes Affecting Notices of Availability:**
  - i. Deletes language in existing law stating that notices shall be in a form prescribed by HCD.
  - ii. 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.”
  - iii. Requires the Department of Housing and Community Development (HCD) to maintain an up-to-date listing and link to all entities, including housing sponsors, that local agencies are required to notify.
  - iv. Clarifies that the following actions are not considered “participating in negotiations:”
    - A. Issuing a request for proposals or request for qualifications; or negotiating a lease, exclusive negotiating agreement, or option agreement for the purpose of complying with the affordable housing or mixed use exemptions under Sec. 54221(f) (A)(F)(G)(H) or (I).
    - B. Negotiating with a developer to determine if a local agency can comply with the Sec. 54221 (d)(2) lease exemption for either (15-years or less) or a longer term (where no development or demolition will occur). *Sec. 54222*
- q) **Changes to Violation Provision:** Changes references to “final sale price” to “final disposition value.” Defines final disposition value as:
  - i. 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.
  - ii. For a lease, the discounted net present value of the fair market value of a lease, as determined by an independent appraisal.
  - iii. Prohibits penalties from applying to violations that do not impact:
    - A. The availability and priority of, or the construction of, housing affordable to lower income households, or
    - B. The ultimate disposition of the land, such as clerical errors. *Sec. 54230.5.*

- r) **Extended Deadline for Pre-Sept. 30, 2019 ENAs:** Extends the deadline to December 31, 2027, to dispose of surplus properties subject to an exclusive negotiation agreement (ENA) entered into prior to September 30, 2019, and outlines a process for reviving a previously-terminated agreement.
- Authorizes a local agency to elect whether to ask the party to the terminated exclusive negotiating agreement or legally binding agreement to dispose of property to consider reviving the terminated agreement.
  - Declares that if the local agency and other party fully execute an instrument reviving the terminated agreement before January 1, 2024, on substantially the same terms and conditions as the terminated agreement, the revived agreement shall be reestablished. *Sec. 54234*
- s) **Consolidates existing statutory limitations applicable to the scope of the SLA:** Consolidates into a single section the existing provisions of the SLA which preserve specific authorities for local agencies and prescribe limits to the SLA's statutory scope<sup>5</sup>. The language in this section reads as follows:
- "This article shall not be interpreted to limit the power of any local agency to sell or lease surplus land at fair market value or at less than fair market value, and any sale or lease at or less than fair market value consistent with this article shall not be construed as inconsistent with an agency's purpose."*
  - This article shall not prevent a local agency from obtaining fair market value for the disposition of surplus land consistent with this section.*
  - This article shall not be interpreted to limit a local agency's authority or discretion to approve land use, zoning, or entitlement decisions in connection with the surplus land.*
  - This article shall not be interpreted to require a local agency to dispose of land that is determined to be surplus.*
  - No provision of this article shall be applied when it conflicts with any other provision of statutory law."* *Sec. 54226*

## Other 2023 SLA Legislation:

- **SB 229 (Umberg) Notice of Violation: Public Hearing.** Requires a local agency disposing of surplus land that has received a notice of violation from the Department of Housing and Community Development (HCD) to hold a public hearing, with notice provided prior to the hearing pursuant to the Brown Act, to review and consider the substance of the notice of violation prior to ratifying or approving the disposal of the surplus land. Agencies that decide not to proceed with disposal after receiving a notice of violation are not required to have a hearing. Ch. 774 of 2023.
- **SB 34 (Umberg) Notice of Violation: OC County and Cities.** Prohibits, until January 1, 2030, the County of Orange, and any city within the county, from disposing of surplus land where the Department of Housing and Community Development (HCD) has issued a notice of violation, until the violation is cured or corrected as determined by HCD. Ch. 772 of 2023.
- **AB 129 (Budget Trailer Bill) Sectional Planning Areas.** Establishes a new SLA exemption for land disposed by a local agency within a "sectional planning area" subject to a plan adopted on land acquired prior to January 1, 2019: that meets one of the following purposes:
  - The land was subject to an irrevocable offer of dedication for a specified purpose.
  - There is a repurchase agreement if the land is not to be developed consistent with the agreement.
  - The land was subject to a grant deed specifying the land was to be used for educational uses and other uses were limited.

"Sectional planning area" is defined as composed of identifiable planning units, within which common services and facilities, a strong internal unity, and an integrated pattern of land use, circulation, and townscape planning are readily achievable. This provision also requires 25 % of

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<sup>5</sup> This consolidated section essentially now reads like a local agency's "Bill of Rights."





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units to be reserved for lower income households, with development occurring concurrently with the non-residential development. Requires an annual report to HCD, and authorizes civil penalty based upon fair market value for violations; sunsets January 1, 2034. Ch. 40, of 2023.

- **1734 (Jones-Sawyer) City of Los Angeles: Emergency Shelters/Affordable Housing.** Provides a stand-alone SLA exemption for the City of Los Angeles (*city with population exceeding 2.5 million*) for land disposed for emergency shelters that meet the definition of a low barrier navigation center, supportive housing, transitional housing, or affordable housing, as defined.
  - i. Requires the city to have a housing element in compliance with the law and a Pro-Housing determination; applies extensive prevailing wage and other labor requirements to construction.
  - ii. Requires annual report to be submitted to HCD, detailing the location of the disposed land, number of emergency shelter beds or housing units approved and produced on the land.
  - iii. Authorizes a civil penalty for violation (30% first time/50% second time) and requires the amount to be based on fair market value as supported by an independent appraisal.
- Authorizes a variety of entities, including HCD, to enforce the civil penalty. Ch. 769, of 2023. **AB 1469 (Kalra) Santa Clara Valley Water District- Homeless Assistance/Agency Use.** Expands the purposes of the Santa Clara Valley Water District to include assisting unsheltered people living along streams, in riparian corridors, or otherwise within the district's jurisdiction, in consultation with a city or the County of Santa Clara to provide solutions or improve outcomes for the unsheltered individuals.

Includes in the district's authority the ability to provide, develop, sell or lease land to develop emergency shelters, low barrier navigation centers, supportive housing, affordable housing, and transitional housing. Provides that such uses of agency property shall be considered "agency use" under the SLA.

Requires the district to provide a report to the Legislature if it uses this authority. Ch. 729, of 2023.

## Next Steps:

- CALED encourages its members to become familiar with these changes, and their potential application to your local agency's property.
- To reduce disputes and delays, SLA practitioners advise keeping track of every detail, date, notice, email, etc. when engaging with HCD over the disposal of surplus property.
- HCD is expected to soon update its SLA guidelines, which will incorporate changes made by 2023 legislation. CALED plans to comment on any draft guidelines, so notify us with any issues/concerns when they are released.
- CALED recommends briefing your legislator on specific challenges your agency is facing with the SLA. If you need a special exemption, consider asking for one.
- Expect a "clean-up" bill in 2024 to address several technical issues with the final version of AB 480.

**While 2023's legislation was a helpful start, CALED will continue to advocate for increased flexibility for local agencies under the SLA to advance economic development.**

*The California Association for Local Economic Development (CALED) is the premier statewide professional economic development organization dedicated to advancing its members' ability to achieve excellence in delivering economic development services to their communities and business clients.*

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