
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: SB 747 **Hearing Date:** 4/24/2023
Author: Caballero
Version: 4/13/2023 Amended
Urgency: No **Fiscal:** Yes
Consultant: Mehgie Tabar

SUBJECT: Land use: economic development: surplus land

DIGEST: This bill makes several changes to the Surplus Land Act (SLA), including, but not limited to, amending key definitions, modifying procedures, modifying the Department of Housing and Community Development's (HCD) authority, and amending the Economic Opportunity Law, with the intent of promoting economic development.

ANALYSIS:

Existing law:

- 1) Establishes procedures for the disposal of publicly-owned land that is surplus to the needs of local agencies, under the SLA, including to:
 - a) Require local officials that want to dispose of public property to declare that the land is no longer needed for the agency's use in a public meeting and declare the land either "surplus land" or "exempt surplus land."
 - b) Designate certain types of land as "exempt surplus land," which do not have to meet the requirements of the SLA.
 - c) Require local agencies to follow the procedures laid out in the SLA before surplus land can be sold, including, but not limited, to:
 - i) Send a written notice of availability to various public agencies and nonprofit groups, referred to as "housing sponsors," notifying them that land is available for the following purposes:
 - (1) Low- and moderate-income housing;
 - (2) Park and recreation, and open space;
 - (3) School facilities; or
 - (4) Infill opportunity zones or transit village plans.

- ii) Negotiate in good faith for 90 days with housing sponsors that respond.
 - d) Allows the local agency to dispose of the property on the private market if agreement is not reached with a housing sponsor.
 - e) Requires that, if a property sold as surplus is not sold to a housing sponsor, but housing is developed on it later, 15% of the units must be sold or rented at an affordable cost to lower income households.
 - f) Imposes specified penalties for violations of the SLA.
- 2) Provides that each community's fair share of housing be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (a) the Department of Finance and HCD develop regional housing needs estimates; (b) councils of government (COGs) allocate housing within each region based on these estimates (where a COG does not exist, HCD makes the determinations); and (c) cities and counties incorporate their allocations into their housing elements.
- 3) Requires cities and counties to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policy objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. Requires the housing element to contain an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs.

This bill:

- 1) Adds new categories of land to the list of "exempt surplus land", including:
- a) Land that is jointly developed or used for specified joint developments between a transit operator and another public agency.
 - b) Land purchased using federal funds and for which a federal agency has authorized its use for specific purposes.
 - c) Land transferred to a community land trust that meets the following conditions:
 - i) The property is being developed or rehabilitated as an owner-occupied single-family dwelling, an owner-occupied unit in a multifamily dwelling, a member-occupied unit in a limited equity housing cooperative, or a rental housing development;

- ii) Improvements will be available for use and ownership or for rent by low- and moderate-income households; and
 - iii) Includes a deed restriction or other instrument that requires an enforceable restriction on the sale or resale value of owner-occupied units, or the affordability of rental units, to be recorded before the lien date following the community land trust's acquisition of the property.
- d) Additional categories of exempt surplus land that HCD determines, including sites that are not suitable for housing.
- 2) Modifies the existing definition of "exempt surplus land" in the following ways:
- a) Expands the exemption for the sale of smaller parcels that are not contiguous to land a state or local agency owns and uses for open space or affordable housing to include leases.
 - b) Expands the exemption for local agencies transferring surplus land to another public entity to include third-party intermediaries for future dedication for the receiving agency's use.
 - c) Adds parking lots to the type of exempt surplus land that can be conveyed to an owner of an adjacent property.
 - d) Removes the requirement for certain affordable housing projects to be put out to open, competitive bids to qualify as exempt surplus land.
 - e) Expands the current exemption for mixed-use developments over one acre and over 300 housing units with at least 25% units reserved for lower-income households to include any mixed-use development with more than one publicly owned parcel that restricts at least 25% of units to lower-income households.
 - f) For surplus land exempt due to valid legal restrictions, the measure provides that valid legal restrictions include:
 - i) Existing constraints under ownership rights or contractual obligations that prevent the use of the property for housing;
 - ii) Conservation or other easements or encumbrances that prevent housing development;
 - iii) Existing leases, or other contractual obligations or restrictions;
 - iv) A voter-approval requirement to transfer the property;
 - v) Provides that feasible methods to mitigate or avoid a valid legal restriction do not include a requirement that the local agency acquire additional property rights or property interests belonging to third parties; and

- vi) Prior to the disposition of the surplus land, requires the local agency to include the relevant legal restrictions in its adopted written findings for the disposal.
- 3) Expands the definition of “agency’s use” to include:
- a) Parcels used or planned to be used for transit or transit-oriented development;
 - b) Port property used to support logistics uses;
 - c) Airports;
 - d) State tidelands;
 - e) Sites for broadband equipment or wireless facilities; and
 - f) Buffer sites near waste disposal sites.
- 4) Adds certain districts to the list of districts for which “agency use” can include commercial or industrial uses. Specifically, the bill adds the following districts:
- a) Infrastructure finance districts;
 - b) Enhanced infrastructure financing districts;
 - c) Community revitalization and investment authorities;
 - d) Affordable housing authorities;
 - e) Transit village development districts; and
 - f) Climate resilience districts.
- 5) Adds a definition of “dispose” to mean:
- a) The sale of surplus land; or
 - b) The lease of surplus land for longer than 35 years, including renewal options included in the initial lease.
- 6) Modifies the SLA’s procedures in the following ways:
- a) Provides that a local agency’s declaration, determination, and written findings, regarding the land that it declares “exempt surplus land” must be presumed conclusive, unless a prejudicial abuse of discretion is established.
 - b) Does not require a local agency to send notification of availability for surplus land prior to disposing of the property, or entering negotiations for its disposal, if it is disposing of the property to, or entering negotiations with, an affordable housing developer proposing to develop an affordable housing project that meets or exceeds the SLA’s 25% affordability threshold.

- c) Requires a local agency that proceeds with a disposal of surplus land to consider the matter at a public meeting within 30 days after receiving a notice of violation from HCD.
 - d) Extends deadlines for surplus land disposals where a city or county entered into a legally binding agreement to dispose of the property prior to September 30, 2019, and the transferee has exercised one or more unilateral extension options included in the original agreement, until December 31, 2025, before they become subject to the SLA.
- 7) Requires HCD to solicit public comments on its proposed guidelines prior to adopting, amending, or repealing them. It must also consider and respond to public comments in writing. Also requires HCD to provide the local agency an appeals process to overturn an adverse action that HCD takes, which an independent trier of fact must oversee.
- 8) Clarifies that the provisions of the Economic Opportunity Law are an alternative to any other authority granted to, or procedures required by law for, cities and counties to acquire, sell, lease, or otherwise transfer property cities or counties own.

COMMENTS:

- 1) *Author's statement.* "For decades, redevelopment agencies (RDA) were responsible for community revitalization and economic development. Among their many activities, RDAs were authorized to set aside funds to acquire property that could later be used to revitalize communities by attracting new business, jobs, and housing. However, RDAs were not without controversy due to the scope of their authority and lack of clarity in law for how properties acquired should be dealt with. In 2011, RDAs were dissolved and the Surplus Land Act (SLA) became the primary statute that determined how local governments may dispose of land held in 'surplus'. Under the SLA, a local agency must issue notice and prioritize the development of affordable housing for surplus land it wishes to dispose of. While affordable housing production is critical to meet California's growing demand for housing, without jobs and other economic development alongside it, communities will continue to lose out. The SLA has limited the authority of local governments to develop affordable housing and pursue the economic opportunities best suited for their communities. SB 747 continues to prioritize affordable housing production while also providing much needed statutory clarity to allow for a more tailored, community-driven approach to disposal and development of surplus land."

2) *California’s housing crisis.* California’s housing crisis is a half century in the making. Decades of underproduction underscored by exclusionary policies have left housing supply far behind need and costs soaring. During the 1990’s, California averaged only 110,000 new housing units per year. During the early 2000’s, production increased significantly, reaching a peak of 212,000 units in 2004 before plummeting to historic lows during the recession. Unfortunately, the downward trend continues; the fact is that California has under-produced housing every single year since 1989.

This severe housing deficit is exemplified in the following table, which summarizes permitted housing units by income level from the 5th and 6th cycles of housing elements. During the 5th cycle, local governments attained 20% of its very low-income (VLI) goals and 30% of its low-income (LI) goals—a stark contrast from the above moderate-income RHNA progress, which attained 143% of its production goal.

RHNA PROGRESS: PERMITS BY AFFORDABILITY

5 th Cycle			6 th Cycle		
Very Low Income			Very Low Income		
55,558 5th Cycle Permits	277,523 5th Cycle RHNA	20.0% % Attained	5,450 6th Cycle Permits	642,652 6th Cycle RHNA	0.8% % Attained
Low Income			Low Income		
55,684 5th Cycle Permits	184,921 5th Cycle RHNA	30.1% % Attained	8,690 6th Cycle Permits	385,743 6th Cycle RHNA	2.3% % Attained
Moderate Income			Moderate Income		
112,874 5th Cycle Permits	204,290 5th Cycle RHNA	55.3% % Attained	9,577 6th Cycle Permits	421,351 6th Cycle RHNA	2.3% % Attained
Above Moderate Income			Above Moderate Income		
693,094 5th Cycle Permits	486,390 5th Cycle RHNA	142.5% % Attained	55,953 6th Cycle Permits	1,050,825 6th Cycle RHNA	5.3% % Attained
94.6% Percent Through Cycle			17.85% % through Cycle		
4/30/2013 Start Date		3/31/2024 End Date	6/15/2019 Start Date		1/31/2032 End Date

Source: HCD’s [Housing Element Implementation and APR Dashboard](#)

According to the 2022 Statewide Housing Plan, published by HCD, California must plan for more than 2.5 million homes over the next eight-year cycle, and no less than one million of those homes must meet the needs of lower-income households.¹

¹ 2022 Statewide Housing Plan: [A Home for Every Californian \(arcgis.com\)](#)

- 3) *Public lands for affordable housing development.* One of the limiting factors in building new affordable homes is land—the high cost and acquisition of land suitable for housing. Public agencies own a significant amount of lands located in or near urban areas, some of which exceed those agencies’ foreseeable needs, which could be used for housing.

The SLA provides affordable housing developers notification when local agencies make land available for reasons other than the agency’s use, and requires local agencies to negotiate in good faith with them for these parcels. The goal is to help valuable public land develop into affordable housing, but this could be at the expense of a local agencies’ economic development opportunities.

This bill aims to “rebalance the provisions of the SLA” to provide local agencies with more opportunity to retain land for agency use, and declare it as exempt surplus land, so they can use it for economic development opportunities.

The bill seeks to clarify that local agencies can use the Economic Opportunity Law as an alternative to disposing of surplus land through the SLA. The intent is to reduce the prescriptive nature of the SLA, as modified by AB 1486 (Ting, Chapter 664, Statutes of 2019) and return flexibility to local officials. These changes could limit opportunities for affordable housing developers to turn surplus land into affordable housing, a vital state goal. The question remains: what is the right balance between providing local agencies with greater flexibility to dispose of their surplus land, particularly for sites that would not be suitable for residential uses, and creating the opportunity to increase the supply of affordable housing?

- 4) *Local surplus lands.* Public agencies are major landlords in some communities, owning significant pieces of real estate. When properties become surplus to their needs, public officials want to sell the land to recoup their investments. SLA spells out the steps local agencies must follow when they want to dispose of land. It requires local governments to give a “first right of refusal” to other governments and nonprofit housing developers, and to negotiate in good faith with them to try to come to agreement.

Before local officials can dispose of property, they must declare in a public meeting that the land is no longer needed for the agency’s use and declare the land either “surplus land” or “exempt surplus land.” Agency use includes land that is being used, or is planned to be used pursuant to a written plan the local agency’s governing board adopts, or is disposed of to support agency work or

operations, including, but is not limited to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or education purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses.

Agency use cannot include commercial or industrial uses or activities. However, if the local agency is a district, “agency use” can include commercial or industrial uses as specified if the agency’s governing body takes action in a public meeting that the use of the site will directly further the express purpose of agency work or operations, or be expressly authorized by a statute provided that the district complies with specified affordable housing requirements.

- 5) *Exempt surplus lands.* The SLA designates certain types of land as “exempt surplus land,” which does not have to meet the requirements of the SLA. All other surplus land must follow the procedures laid out in the SLA before a local agency can sell it. Exempt surplus land includes, but is not limited to, public land transfers for less than fair market value to provide affordable housing, land that a local agency is exchanging for another property necessary for the agency’s use, and land that is a former street, right-of-way, or easement, and the local agency conveys to an owner of an adjacent property.
- 6) *First right of refusal.* Before agencies can enter into negotiations to sell surplus land, they must send a written notice of availability to various public agencies and nonprofit groups, referred to as “housing sponsors,” notifying them that land is available for lower income housing, parks, open space, school facilities or infill opportunity zones or transit village plans. Housing sponsors can notify HCD that they are interested in acquiring surplus land to develop affordable housing. HCD maintains a list of notices of availability on its website.

If another agency or housing sponsor wants to buy or lease the surplus land for one of these purposes, it must tell the disposing agency within 60 days, and if multiple entities want to purchase the land, the housing sponsor that proposes to provide the greatest level of affordable housing gets priority. The agency and the housing sponsor then have an additional 90 days to negotiate a mutually satisfactory price and terms in good faith. If they cannot agree, the agency that owns the surplus land can sell the land on the private market. The SLA says that nothing in its provisions prevents a local agency from disposing of the land at or below fair market value, where not in conflict with other law.

- 7) *Enhancing responsibility and transparency: AB 1486 (Ting).* In 2019, the Legislature substantially revised the SLA through the passage of AB 1486 to increase the emphasis on affordable housing and address concerns that some local agencies were bypassing the SLA’s requirements. Among other changes,

AB 1486 broadened the definition of surplus land and required land to be designated as surplus prior to the local agency selling the land, which ensures that local agencies must comply with the SLA. AB 1486 prohibited local agencies from counting the sale of land for economic development purposes as being “for the agency’s use.” This means that local agencies must open their properties up to affordable housing developers first, even if they have different purposes in mind for the property. Additionally, AB 1486 instituted a requirement that if a property sold as surplus is not sold to a housing sponsor, but housing is developed on it later, 15% of the units must be sold or rented at an affordable cost to lower-income households.

Finally, AB 1486 imposed penalties on local agencies that dispose of surplus land in violation of the SLA totaling 30% of the sales price of land disposed of in violation of the SLA for a first violation, and 50% of the price of the land for subsequent violations. These penalty revenues must be deposited in a local housing trust fund. AB 1486 established an enforcement process to ensure adequate noticing requirements, timely written findings to local agencies, the opportunity to respond to and correct findings, proper notification to local government and the Attorney General of violations, and that no local agency be held liable for SLA penalties if no violation was received.

AB 1486 also provided that certain projects could use the previous version of the SLA before AB 1486 amended it, if the local agency, as of September 30, 2019, entered into an exclusive negotiating, or legally binding, agreement to dispose of property, provided the local agency completed the disposition by December 31, 2022.

- 8) *HCD’s SLA guidelines.* AB 1486’s amendments to the SLA gave HCD the authority to adopt guidelines to implement the penalty provisions of the SLA. In April 2021, HCD issued guidance which, among other things, provided that disposal included both sales and leases of land, and required local agencies to notify HCD not only prior to agreeing to terms on surplus land, but also 30 days prior to disposing of exempt surplus land.

To date, HCD has tracked 525 exempt surplus land dispositions and 237 standard surplus land dispositions, resulting in 5,393 units, of which 4,065 are affordable units. Additionally, HCD has tracked 273 land dispositions; there are currently 21 projects in the pipeline generating a total of 2,994 housing units of which 1,832 are affordable. These are units that would have been unlikely to be developed in this capacity without the SLA, and the 1,832 affordable units will serve an estimated 36,000 lower-income households over the lifespan of their affordability covenants.

- 9) *Economic Opportunity Law.* SB 470 (Wright, 2013) created a process for a city, county, or city and county to sell or lease properties, which are returned to them as part of the long-range property management plan of a former RDA, for economic development purposes. The measure provided that its provisions were an alternative to any other authority granted to local agencies to dispose of their property. The disposal process under Economic Opportunity Law includes various steps, including a requirement for the local agency to pass a resolution or ordinance approving the sale or lease of the property, which must include a finding that the property's sale or lease will assist in the creation of economic opportunity. The intent of this bill is to amend the SLA to provide local agencies with more economic development opportunities, and help clarify SLA procedures.
- 10) *Settling a long standing dispute over leases.* The question of whether leases are subject to the SLA after AB 1486's enactment has generated controversy—local governments argue that leases are not, while HCD published guidance on the SLA that states that they are.

This means that many local agency leases are subject to the SLA, which can add bureaucratic red tape to many transactions for land that would never be developed for affordable housing (*e.g.*, a museum in a city park or a coffee stand in a public transit station).

To help address these concerns, SB 747 makes various changes to the process for local agencies to comply with the SLA, and the ways in which HCD oversees it. Most notably, the measure provides that a local agency's declaration of "exempt surplus land" must be presumed conclusive unless they abuse that discretion, and requires HCD to provide the local agency an appeals process to overturn an adverse action that HCD takes, which an independent trier of fact must oversee. This bill seeks to settle this dispute by excluding leases for 35 years or less from the SLA. While these changes intend to create a clearer process for local agencies to follow, the Committee may wish to consider whether the measure gives local agencies too many opportunities to avoid offering their surplus land for affordable housing.

- 11) *Policy Considerations.* The Committee may wish to consider the following:
- a) *Where does it end with exemptions?* The SLA mandates that local agencies prioritize affordable housing when they dispose of surplus land. As noted the SLA currently exempts the disposal of several categories of land, including land used to develop affordable housing. This recognizes that certain land dispositions are consistent with the purpose of the SLA's goals of creating

affordable housing. The SLA also exempts land that is not suitable for the development of affordable housing. The goal of the SLA was to encourage more affordable housing production, and recent data from HCD indicates the law is working. This bill would create fewer opportunities for housing. ***The committee may wish to consider only allowing the economic exemptions in this bill to apply to jurisdictions that are meeting their LI and VLI income targets pursuant to their most recent annual progress report.***

- b) ***Rewarding bad actors.*** While it is evident that the SLA could be amended to be clearer and make the local agencies' disposition process less burdensome, changes in this bill could reward bad actors by letting them circumvent SLA requirements. Even under current law, the state continues to see local agencies attempt to evade the SLA. For example, the City of Anaheim recently tried to sell the Angels Stadium without complying with the disposition process of the SLA and for a below fair-market value. HCD notified the City of the violation and steps to cure, which were not sufficiently addressed. Eventually the Attorney General and the city reached a settlement, including a large fine and requirement to pay for the development of affordable housing on site (however, the deal was eventually voided because of allegations of corruption associated with the deal). ***The Committee may wish to consider only allowing the economic exemptions in this bill to apply to jurisdictions that have a compliant housing element.***
- c) ***Conclusive standards?*** This bill not only allows local agencies to administratively declare land as "exempt surplus land", but also states that the local agency's declaration, determination, and written findings, regarding the declaration of "exempt surplus land" is "presumed conclusive", unless a "prejudicial abuse of discretion" is established. The committee is concerned that this language is fairly ambiguous, not standard terminology in agency law, and would constrain HCD's ability to determine if violations occurred. Is there a need to specify a standard of review when it's an agency deciding within its role that there is a violation? ***The Committee may wish to consider removing the conclusive standards provision from the bill.***
- d) ***Competing Measures.*** Several authors introduced measures that seek to amend the SLA this year. ***The author and sponsors of this bill may wish to coordinate their efforts with other measures amending the SLA to avoid conflict and duplication.***
- 12) ***Opposition.*** Those writing in opposition are concerned that this bill would undermine the purpose of the SLA and weaken "...one of the most powerful laws protecting our public resources and championing our affordable housing goals." They also noted that many provisions of this bill merit a broader

conversation and should be discussed with a larger group of housing stakeholders.

- 13) *Double-referral*. This bill was first referred to the Committee on Governance and Finance, where it passed on an 8-0 vote on April 12, 2023.

RELATED LEGISLATION:

SB 361 (Umberg, 2022) — would have required the City of Anaheim to comply with additional transparency requirements prior to disposing of surplus land. *This bill was ordered to the inactive file on the Assembly Floor.*

SB 1373 (Kamlager, Chapter 724, Statutes of 2022) — extended the authority for the City of Los Angeles to complete disposition of certain surplus property in accordance with the SLA as it read on December 31, 2019.

AB 1784 (Seyarto, 2022) — would have created an SLA exemption for low density parcels located in jurisdictions that meet or exceed their 6th cycle Regional Housing Needs Allocation (RHNA) production targets for VLI and LI housing on an annual basis. *This bill was held in the Governance and Finance Committee.*

AB 2319 (Bonta, Chapter 963, Statutes of 2022) — created an exemption from the SLA for the Alameda Naval Air Station (Alameda Point).

AB 2357 (Ting of 2022) — was substantially similar to AB 480 (Ting, 2023) and would have changed the penalty provisions of the SLA and made procedural changes to noticing provisions that apply to “surplus land” and “exempt surplus land” disposed of by local agencies subject to the SLA. *This bill was held in the Governance and Finance Committee.*

AB 1271 (Ting, 2021) — would have expanded the types of land exempt from the SLA, imposed new procedural requirements on local agencies disposing of surplus land, and would make various technical changes to the SLA. *This bill was held the Assembly Housing and Community Development Committee.*

SB 719 (Min, 2021) — would have provided that land comprising the former Tustin Marine Corps Air Station is exempt surplus land for the purposes of the SLA if certain affordability standards for residential developments and other conditions are met. *This bill was held in the Assembly Housing and Community Development Committee.*

AB 1486 (Ting, Chapter 664, Statutes of 2019) — expanded the scope of local agencies subject to the SLA, revised the definitions of “surplus land” and “exempt surplus land,” revised the noticing requirements relative to local agencies, housing sponsors and HCD, and added penalties for local agencies that sell land in violation of the SLA.

AB 2135 (Ting, Chapter 644, Statutes of 2014) — amended the procedure for the disposal of surplus land by local agencies and expanded the provisions relating to the prioritization of affordable housing development if the surplus land will be used for residential development.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, April 19, 2023.)

SUPPORT:

- Calaveras County Economic & Community Development
- California Association for Local Economic Development (CALED)
- California Business Properties Association
- City of Bakersfield
- City of Bellflower
- City of Brentwood
- City of Elk Grove
- City of Fowler
- City of Fullerton
- City of Inglewood
- City of Montclair
- City of Murrieta
- City of Ontario
- City of Palmdale
- City of Paramount
- City of San Marcos
- City of Tustin
- City of West Sacramento
- County of San Bernardino
- Kosmont Companies
- Solano Economic Development Corporation

OPPOSITION:

Centro Legal De LA Raza
East Bay Housing Organizations
Generation Housing
Merritt Community Capital Corporation
Monument Impact
Non-profit Housing Association of Northern California (NPH)
San Diego Housing Federation
Western Center on Law & Poverty

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