SENATE COMMITTEE ON LOCAL GOVERNMENT

Senator María Elena Durazo, Chair

2025 - 2026 Regular

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SURPLUS LAND: EXEMPT SURPLUS LAND: SECTIONAL PLANNING AREA

Modifies the affordability and density requirements of the Surplus Land Act exemption that applies to land subject to a sectional planning document adopted prior to January 1, 2019.

Background

Surplus Land Act. Public agencies are major landlords in some communities, owning significant pieces of real estate. When properties become surplus to an agency's needs, public officials want to sell the land to recoup their investments. The Surplus Land Act (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. This means that local agencies must open their properties up to affordable housing developers first, even if they have a different purpose in mind for the property.

Surplus land vs. agency's use. Before local officials can dispose of property, they must 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." Land that is being used for an agency's use is not subject to the SLA. "Agency's use" includes land that is being used, or is planned to be used pursuant to a written plan adopted by the local agency or will be disposed of to support agency work or operations.

As a general rule, agency's use cannot include commercial or industrial uses or activities, and land disposed of for the purpose of investment or generating revenue cannot be considered necessary for the agency's use. As a result, cities and counties are limited in their ability to dispose of properties for economic development or revenue generation purposes. However, most special districts are not subject to those restrictions on agency's use as long as they can demonstrate that use of the site will do one of the following:

- Directly further the express purpose of agency work or operations.
- Be expressly authorized by a statute governing the local agency.

Transit districts can only dispose of property for commercial or revenue generation purposes if they meet specific requirements for developing affordable housing across their portfolio of properties, and have made a certain amount of progress towards building that housing.

The SLA designates certain types of land as "exempt surplus land." Statute provides that the entirety of the SLA does not apply to disposals of exempt surplus land. All other surplus land must follow the procedures laid out in the SLA before a local agency can sell it.

SLA process. Before agencies can enter into negotiations to dispose of 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 the following purposes:

- Low- and moderate-income housing;
- Park and recreation, and open space;
- School facilities; or
- Infill opportunity zones or transit village plans.

Housing sponsors can notify the Department of Housing and Community Development (HCD) if 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. If surplus land is not sold to an affordable housing developer, but housing is developed on it later, 15 percent of the units must be sold or rented at an affordable cost to lower income households.

The SLA says that nothing in its provisions:

- Limits the power of any local agency to sell or lease surplus land at fair market value or less than fair market value;
- Prevents a local agency from obtaining fair market value;
- Limits a local agency's authority or discretion to approve land use, zoning, or other entitlement decisions in connection with surplus land; or
- Requires a local agency to dispose of land just because it is surplus.

Local agencies that dispose of surplus land in violation of the SLA face penalties totaling 30 percent of the sales price, or fair market value of the sale or lease, of land disposed of in violation of the SLA for a first violation, and 50 percent for subsequent violations. These penalty revenues must be deposited in a local housing trust fund. The enforcement process in the SLA requires that:

- Prior to agreeing to terms for the disposition of surplus land, a local agency must provide HCD a description of the notices of availability sent, and negotiations conducted with any responding entities, as specified.
- HCD must submit written findings to the local agency within 30 days of receipt of the description of the disposal if the proposed disposal of the land will violate SLA.
- A local agency has at least 60 days to respond to the findings before HCD may take further action. The local agency must consider findings made by HCD and then either correct any issues found by HCD or respond in writing why the disposal complied with the SLA.
- If the local agency does not respond or does not address the issues, HCD must notify the local government and may notify the Attorney General that the disposal violates the SLA.

- A local agency cannot be held liable for the penalties under the SLA if HCD does not notify the agency that the agency is in violation within 30 days of receiving the description.

Recent SLA revisions. Two bills chaptered in 2023, SB 747 (Caballero) and AB 480 (Ting), made significant changes to the SLA. Collectively, the bills attempted to strike a balance between ensuring comprehensive coverage of dispositions, while enacting exemptions and other changes that would streamline the process for local governments. Specifically, SB 747 and AB 480:

- Define "dispose" in the law to include leases of longer than 15 years that are entered into on or after January 1, 2024, but exclude leases of shorter than 15 years and leases where no development or demolition will occur;
- Apply penalties to leases that violate the SLA, but provide that penalties don't apply to non-substantive violations of the SLA;
- Add numerous categories of exempt surplus land, such as properties of smaller than one-half acre, specified mixed-use developments and developments on larger sites that include affordability requirements, airport land, and others;
- Authorize disposal of certain categories of exempt surplus land without a public hearing, as long as specified notice is provided;
- Establish additional types of activities that explicitly qualify as "agency's use"; and
- Extend provisions that allow projects with an exclusive negotiating agreement in place to follow a previous version of the SLA.

City of Chula Vista. Chula Vista is a charter city, and San Diego County's second largest city, with just over 275,000 residents. The City has long hoped to attract a university. On October 28, 1993, the Chula Vista City Council and the San Diego County Board of Supervisors adopted the Otay Ranch General Development Plan/Subregional Plan (GDP/SRP) to implement this vision. Chula Vista and San Diego County jointly adopt and amend the GDP/SRP, which functions as a general plan level document for both the county and the city. Land use planning within the area must be consistent with the GDP/SRP. To help ensure consistency with the GDP/SRP, the City requires the preparation and adoption of "Sectional Planning Area" plans, and the County of San Diego requires "Specific Plans."

In 2018, the City of Chula Vista created a University Innovation District: Sectional Planning Area (UI-SPA), by adopting a sectional planning area document to guide a portion of the implementation of the GDP/SRP. Chula Vista's UI-SPA functions as a discretionary land use plan and therefore must be consistent with the GDP/SRP as adopted by the two local agencies.

From 1990 to 2014, Chula Vista acquired parcels to implement the UI-SPA. Many of these parcels included legal restrictions on the type of developments allowed on the parcel. Some required the land be used for "future university purposes." Others gave the previous owner repurchase rights if the City decided to use it for "non-university development," including non-university related housing.

The SLA considers land subject to valid legal restrictions that prohibit housing, unless there is a feasible method to satisfactorily mitigate or avoid the prohibition on the site, to be exempt from the Act. Chula Vista asked HCD to concur it would consider the parcels with these legal

constrictions to be exempt from the SLA. Late 2022, HCD issued letters to Chula Vista stating that none of the parcels qualified for an SLA exemption.

HCD reviewed the agreements and found that many of the restrictions limited the types of developments on these parcels, but did not explicitly prohibit housing. Additionally, since the City was party to the agreements, HCD considered the restrictions to be imposed by the city, and therefore not subject to the exemption for valid legal restrictions. As such, HCD informed the City of Chula Vista it must follow the standard SLA protocols when disposing of the parcels in its sectional planning area.

AB 129 (Committee on Budget, 2023) created an SLA exemption for land subject to a sectional planning area adopted prior to January 1, 2019 if that sectional planning area is consistent with county and city general plans. To qualify for an exemption, the land must be dedicated for the local agency's use before January 1, 2019. It also must have met at least one of the following conditions by January 1, 2019:

- The land was subject to an irrevocable offer of dedication of fee interest requiring the land to be used for a specified purpose;
- The land was acquired through a land exchange subject to a land offer agreement that grants the land's original owner the right to repurchase the land acquired by the local agency pursuant to the agreement if the land will not be developed in a manner consistent with the agreement; or
- The land was subject to a grant deed specifying that the property shall be used for educational uses and limiting other types of uses allowed on the property.

AB 129 also required all of the following:

- At least 25% of housing units in the sectional planning area be dedicated to lower income households at an affordable rent or cost subject to a deed restriction of 55 years for rental units and 45 years for owner-occupied units, unless otherwise specified;
- That the land must also be developed at an average density of at least 10 units per acre, calculated with respect to the entire sectional planning area; and
- That nonresidential square footage in the sectional planning area must not be developed faster than the residential square footage; and
- That the local agency include in its housing annual progress report the status of the development, including information like how many affordable housings units it has permitted; and
- At least 30 days before disposing of land as "exempt surplus land, the local agency must provide HCD with a written notification. Within 30 days of receipt, HCD must notify the local agency if it is in violation of the SLA. Local agencies that do not comply with these requirements are subject to specified civil penalties.

AB 129's provisions sunset on January 1, 2034.

Now that the City of Chula Vista has sought to implement AB 129, it has identified challenges it will face when it comes to the affordability requirement. Current law requires that 25% of the housing constructed across the entire sectional planning area (totaling 384 acres), at a minimum density of 10 units per acre, be affordable to lower income households. This calculation would yield a minimum of 960 units of affordable housing. The sectional planning area identifies

housing for students, staff, and faculty housing, and, separately, market-rate housing. The section planning area proposes to include 2 million square feet of market-rate housing, which equates to a proposed 2,000 units. Applying the 25% affordable housing requirement to just the proposed 2,000 market rate units would yield a minimum of 500 units of affordable housing. Chula Vista does not believe that it could develop the area if 960 units of the market rate units have to affordable.

To address these concerns, the City of Chula Vista wants to change the affordability requirement to exempt housing for students, faculty, and staff from the calculation of the number of required affordable housing units.

Proposed Law

Assembly Bill 76 modifies the SLA exemption that applies to land subject to a sectional planning document adopted prior to January 1, 2019, to:

- Exclude housing units designated for students, faculty, or staff of an academic institution from the minimum 25% of housing units proposed in the sectional planning area that must be affordable to lower income households; and
- Allow student housing units that include specified kitchen and bathroom facilities, and are not determined to be substandard buildings, to count towards the 10 units per acre minimum density requirement for the sectional planning area.

Comments

1. Purpose of the bill. According to the author, "Chula Vista's university effort is positioned to benefit the region greatly. A university presence in the South County would be a key player within the regional economy, producing graduates who occupy regional jobs, employing thousands of local workers, and contributing to the regional and state economies. A South County university presence would also provide more equitable access to higher education. Bachelor's degree holders have greater earning power and can earn about $32,000 more annually than those with a high school diploma. The City will develop approximately 4,000 residential units as part of the mixed-use UID project. The change in AB 76 is needed to build a much-needed four-year university in South County and provide the housing necessary for the university's students, faculty, and staff."

2. Housing uber alles. Until 2020, the SLA was largely toothless. AB 1486 (Ting, 2019) rewrote the SLA to include many of the provisions in the SLA today. The 2019 amendments to the SLA were intended to increase the supply of housing affordable to lower-income Californians by giving affordable housing developers the first right of refusal on surplus local properties and by imposing affordability requirements on surplus land that later had market-rate housing built on it. The changes also strictly limited the cases where local governments could dispose of land to support commercial purposes, on the theory that if given the option, local governments would preferentially offer land to most other developers, instead of affordable housing. AB 129 granted an additional exception to the SLA for Chula Vista's university project, but to ensure Chula Vista follows the SLA's primary purpose to increase the supply of housing affordable to lower-income residents, AB 129 required 25% of the housing to be affordable. However, the measure did not specify whether that meant 25% of all housing units, including those for students, faculty, and staff, or 25% of the market rate units. According to

Chula Vista, requiring 25% of all housing in the sectional planning area to be affordable means that they would have to build roughly 960 affordable housing units. Making half of 2,000 units affordable would make it more difficult for the project to pencil out since the return on investment for the developer would be much lower. If the 25% requirement applies only to the 2,000 market rate units, the City would only have to build 500 affordable units, which the City believes would still allow the development to pencil out. However, under AB 76, if Chula Vista ends up developing only student, faculty, and staff housing, the City would not have to build any affordable housing units for the broader community, running counter to the purpose of the SLA. The Committee may wish to consider amending the bill to ensure that the City develops a minimum number of affordable housing units.

Assembly Actions

Assembly Local Government Committee:	8-1
Assembly Housing and Community Development Committee:	10-1
Assembly Floor:	66-0

Support and Opposition (7/11/25)

Support: City of Chula Vista (Sponsor)
Cdp Rural Caucus
Cft- a Union of Educators & Classified Professionals, Aft, Afl-cio

Opposition: None Submitted

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