

SURPLUS LAND ACT PROCESS/TIMING OVERVIEW

The following provides a high-level overview of the land disposition process required by the Surplus Land Act:

Step 1: City Council declares property “Surplus Land.”

Step 2: City staff sends Notice of Availability (NOA). All NOAs shall be sent by certified mail or email to:

- HCD and any local public entity as defined in Health and Safety Code Section 50079¹ within whose jurisdiction the surplus land is located. HCD will maintain on its website an up-to-date listing of all notices of availability throughout the state.
- Housing sponsors that have notified HCD of their interest in surplus land that is in Alameda County or in all California counties.

Step 3: Prospective purchasers/lessees have 60 days to respond to the NOA.

- All responses shall be time stamped by the City as they are received.
- Any entity may respond, even if the City was not required to send such entity the NOA.
- The City may not issue a request for proposals on surplus land less than 60 days from the date that the City issues the NOA of surplus land.
- If a notice of interest is received in response to a NOA a request for proposals may not be issued until after the conclusion of the 90-day negotiation period.

Step 4: If the City receives a timely notice of interest from a proper entity, then the City must negotiate in good faith with such entity for a period of 90 days.

- The 90-day good faith negotiation period begins on the first day that the City and the prospective transferee actually begin negotiations.

¹ Health and Safety Code Section 50079 defines “local public agency” as any county, city, city and county, the duly constituted governing body of an Indian reservation or rancheria, tribally designated housing entity as defined in Section 4103 of Title 25 of the United States Code and Section 50104.6.5, redevelopment agency organized pursuant to Part 1 (commencing with Section 33000) of Division 24, or housing authority organized pursuant to Part 2 (commencing with Section 34200) of Division 24, and also includes any state agency, public district, or other political subdivision of the state, and any instrumentality thereof, that is authorized to engage in or assist in the development or operation of housing for persons and families of low or moderate income. “Local public entity” also includes two or more local public entities acting jointly.

- If the price or terms cannot be agreed upon after the full good faith negotiation period, then the City may dispose of the surplus land as provided by Government Code Section 54233.
- The City cannot prohibit residential use of the surplus land as a condition of a sale or lease.
- The City cannot reduce the authorized number of residential units or the maximum lot coverage of the surplus land below what is allowed by zoning or general plan requirements.
- The City may not require, as a condition of sale or lease, any design standards or architectural requirements that would have a substantial negative effect on the viability or affordability of a housing development for very low, low-or moderate-income households, other than the minimum standards required by general plan, zoning, and subdivision standards and criteria.

Step 5: Sell or lease the surplus land following the expiration of the 90-day good faith negotiation period.

- *Competing Bids*: The City may negotiate concurrently with all entities that provide notice of interest for the purpose of developing affordable housing. In the event the City receives a notice of interest to purchase or lease that land from more than one of the entity, the City shall give first priority to the entity or entities that agree to use the site for affordable housing that meets the requirements of Government Code Section 54222.5. If the City receives notices of interest from more than one entity that agrees to meet the requirements of Government Code Section 54222.5, then the City shall give priority to the entity that proposes to provide the greatest number of units that meet the requirements of Government Code Section 54222.5.
- *Grounds to Reject Offer*: The City may reject an offer i) when the City and buyer cannot agree on sales price; ii) when priority is given to a competing application that includes a greater number of affordable units or, in case of a tie in the number, the lowest average level of affordability consistent with Government Code Section 54222.5; or iii) when the bidder is not responsive to the City's reasonable goals/preferences as described in the NOA, provided that such goals and preferences are consistent with HCD Guidelines and the SLA, and such goals and preferences are approved by HCD.
- *Negotiations End with No Sale or Lease of Surplus Land*: If the City does not agree to price and terms with an entity to that responds to the NOA or if no entity to responds to the NOA, then the land in question may be sold to any buyer for any purpose.

Sample Negotiation Process Timeline

The following represents a sample timeline for negotiations if the City were to receive two responses to the Notice of Availability:

- October 10, 2022 – The City sends a Notice of Availability of surplus land;
- October 17, 2022 – Potential Purchaser 1 sends notice of interest to the City;
- October 19, 2022 – The City receives notice of interest from Potential Purchaser 1;
- October 20, 2022 – 90-day, good faith negotiation period commences for Potential Purchaser 1;
- November 7, 2022 – Potential Purchaser 2 sends notice of interest to the City;
- November 9, 2022 – The City receives notice of interest from Potential Purchaser 2;
- November 10, 2022 – 90-day, good faith negotiation period commences for Potential Purchaser 2;
- January 8, 2023 – Last day for an entity desiring to purchase or lease the surplus land to respond to the Notice of Availability;
- January 18, 2023 – Last day of 90-day, good faith negotiation period for Potential Purchaser 1;
- February 8, 2023 – Last day of 90-day, good faith negotiation period for Potential Purchaser 2;
- April 18, 2023² – First day that the City may dispose of the surplus land to any purchaser.

² This date adopts the conservative approach of using the last day of the last applicable 90 day negotiation period. The statutory language is unclear as to whether the City could sell after the expiration of the first 90 day period applicable to Potential Purchaser 1 or if the City has to wait until all 90 day negotiation periods expire.