

New State Guidelines Clarify When Leases of Local Agency-Owned Land are Subject to the Surplus Land Act

Key Points

- The California Department of Housing and Community Development has released new guidelines for implementing the Surplus Land Act, which clarify when leases are subject to the terms of the Act.
- Pursuant to the new guidelines, leases are not subject to Surplus Land Act when the lease involves "land on which no development or demolition will occur" or leases with "a term that is less than five (5) years (including any extensions, amendments or options)."
- The new guidelines supersede draft guidelines that were released in November 2020, which specified that all leases were subject to the Surplus Land Act.

Last week, the California Department of Housing and Community Development issued [new regulatory guidelines for the implementation of the Surplus Land Act](#) (Gov. Code, § 54220 *et seq.*). These new guidelines provide important clarification about the types of leases that are subject to the terms of the Surplus Land Act.

Under the Surplus Land Act, local agencies are generally required to give housing developers, park districts, or public school districts the first chance to purchase and develop agency-owned land when both of the following preconditions occur:

1. The agency declares that the land is no longer needed for agency use (i.e., "surplus"), and
2. The agency takes steps to "dispose" of the land or to engage in negotiations to dispose of the land.

The Surplus Land Act does not define the terms "dispose" or "disposition," and the plain text of the Act does not expressly specify whether a lease qualifies as a "disposition."

The Department of Housing and Community Development's new guidelines clarify that the term "disposition of surplus land" means "the sale or lease of local agency-owned land formally declared surplus." However, the guidelines also specify that two types of leases are excluded from this definition:



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1. Leases of land on which no development or demolition will occur, or
2. Leases that have a term that is less than five (5) years (including any extensions, amendments, or options).

However, an enforceable option to lease, as defined by these guidelines, will qualify as a lease for purposes of Surplus Land Act compliance. The guidelines also state that if a local agency is unsure whether a transaction involving local agency-owned land meets this definition, they are encouraged to email publiclands@hcd.ca.gov for additional guidance from the Department of Housing and Community Development.

The new Surplus Land Act guidelines supersede draft Surplus Land Act guidelines that were initially published in November 2020. The draft guidelines had included much more restrictive limitations on leases by defining the term "disposition of surplus land" as any sale or lease of local agency-owned land formally declared surplus, with no exceptions.

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