

CLIENT NEWS BRIEF

New Law Will Significantly Impact Local Agencies' Disposition Of Property; Impact On School Districts Is Limited

On October 9, 2019, Governor Gavin Newsom signed into law a bill that will have sweeping effects on local agencies disposing of real property under the California Surplus Land Act. Assembly Bill (AB) 1486 adds several new requirements to the process, as well as potentially severe penalties for non-compliance. The bill also makes changes to planning and zoning laws applicable to cities and counties. Application of the new law to school districts is expressly limited.

Changes to Surplus Property Disposal Laws

The California Surplus Land Act (Government Code section 54220, *et seq.*) (Act) currently requires local agencies, prior to disposing of surplus property, to offer to sell or lease that property to certain entities for specified uses, including affordable housing, parks and recreation, and schools uses. After making these preliminary offers, if the disposing agency receives notice of interest from one of the entities under the Act, the disposing agency and the responding entity must enter into negotiations to sell or lease the property for a period of at least 90 days - presumably unless, before that time expires, an agreement is reached or the parties agree to terminate negotiations. If no notice of interest is received or negotiations do not result in a disposition of the property, and the local agency subsequently disposes of the surplus land for development of 10 or more residential units, then not less than 15% of the total number of units developed on the site must be sold or rented as affordable housing. School districts are governed by additional requirements and timelines under the Education Code.

AB 1486 imposes several changes to the Act, including the following:

- Expressly clarifies that the law applies to local agencies of every kind, including cities, counties, districts, joint powers authorities, successor agencies to former redevelopment agencies, housing authorities, or other political subdivisions of the state and any instrumentality thereof authorized to acquire and hold real property.
- Requires all local agencies, at a regular public meeting prior to disposing of surplus land, to declare the land as either "surplus land" or "exempt surplus land." The local agencies' declaration must be supported by written findings.
- Significantly expands the definition of "exempt surplus land," to include land covered by certain provisions of the Education Code, and land that is conveyed to another local, state, or federal agency for that agency's use.

Perhaps most significantly, AB 1486 empowers the California Department of Housing and Community Development (HCD) and beneficially interested individuals with considerable oversight and authority to enforce the provisions of the Act. AB 1486 requires every local agency, prior to agreeing to terms for the disposition of surplus land, to provide HCD with a description of the process followed to dispose of the land. HCD must then review the description

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and submit written findings to the local agency. If notified by HCD of a violation of the Act, and if the local agency fails to correct its violation within a certain period of time, then HCD may impose a penalty on the local agency of up to 30% of the final purchase price of surplus property sold, and up to 50% for repeat violations of the Act. Finally, AB 1486 provides that any "beneficially interested person or entity" may bring an action to enforce the Act. These particular provisions of the Act pertaining to enforcement and oversight by HCD and interested individuals will not be implemented until January 1, 2021. The remainder of the changes appear to apply to any transaction where an exclusive negotiating agreement or legally binding agreement to dispose of property was entered into after September 30, 2019. For agreements entered into prior to that date, the changes apply if the disposition is not completed by December 31, 2022.

Applicability to Property Owned by School Districts

By explicitly including land that is subject to Education Code section 17388 in the bill's definition of "exempt surplus land," the Legislature appears to have clarified that school districts are not bound by many of the Act's requirements when disposing of excess real property. This would mean that the penalty provisions of the Act would not apply to sale or lease of school district property. However, school districts appear to be bound by the bill's requirements to declare property either "surplus land" or "exempt surplus land," which declaration must be supported by written findings. School districts are also expressly required to offer to sell or lease real property for park or recreational purpose pursuant to the Act, although existing Education Code requirements already appeared to require the same. School districts are subject to a host of existing Education Code requirements, separate from the Act, related to the disposition of surplus property, including real property, which still must be followed. In light of ambiguities resulting from the Act, school districts should consult with legal counsel early in the process of disposal of real property, and should confirm that current efforts to sell or lease do not need to be revisited after the Act's passage.

New Planning and Zoning Law Requirements

Under the existing Planning and Zoning Law, counties and cities must adopt, within their general plans, a housing element identifying and analyzing existing and projected housing needs, identifying adequate sites for housing, and ensuring that regulatory systems provide opportunities for, and do not unduly constrain, housing development. Existing law further requires each city and county to submit an annual progress report (APR) to HCD and the Office of Planning and Research (OPR) relating to the jurisdiction's progress in meeting its share of regional housing needs.

AB 1486 imposes three new changes on the Planning and Zoning Law:

- Cities and counties must include in their APR a listing of specified sites owned by the city or county that have been sold, leased, or otherwise disposed of in the prior year.
- The housing elements adopted by cities and counties must now provide a description of nonvacant sites owned by the entity, whether there are any plans to dispose of the property during the planning period, and how the city or county will comply with the Surplus Land Act.
- HCD must now notify cities and counties of any violations of the Act committed by the cities and counties, and HCD may notify the attorney general of same.

Key Takeaways

Through AB 1486, the Legislature intends to promote affordable housing development by tapping into the supply of surplus land held by California local agencies. AB 1486 will give HCD significantly greater involvement in and control over the processes by which local agencies dispose of surplus land, and the Bill's severe penalties will likely give weight to these new changes.

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It is unclear how certain of these requirements will be implemented. For instance, the revised Act does not describe what kind of “written findings” are required before a local agency may declare property surplus at a public meeting. As HCD prepares educational resources and materials, however, all local agencies should educate officers and staff on the new requirements imposed by the Act. Some local agencies will also need to modify their surplus property disposal procedures to account for the Act’s new requirements.

For more information on how your agency can prepare for the effects of this new law, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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