

Date of Hearing: April 9, 2025

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 76 (Alvarez) – As Introduced December 16, 2024

SUBJECT: Surplus land: exempt surplus land: sectional planning area

SUMMARY: Specifies, for purposes of meeting the requirements a category of exempt surplus land, that student, staff, and faculty housing can be counted toward minimum density requirements and excludes student, staff, and faculty housing from the total number of units used for calculating the minimum number of affordable housing units to be constructed. Specifically, **this bill:**

- 1) Requires, for the purposes of an exemption of the Surplus Land Act (SLA) that applies to land subject to a sectional planning document adopted prior to January 1, 2019, that 25% of housing units not designated for students, faculty, or staff of an academic institution be dedicated to lower income households, as specified, .
- 2) Provides, for purposes of the SLA exemption that applies to land subject to a sectional planning document prior to January 1, 2019, that a “student housing unit” must meet all of the following to count towards the minimum density requirement:
 - a) The unit includes a fully functioning kitchen with a refrigerator, stove, sink with hot and cold water, vent, and an area to prepare food.
 - b) The unit has a ratio of beds to toilets, lavatories, and showers not exceeding five to one.
 - c) The unit is not a substandard building, as specified.
- 3) Makes other technical and conforming changes.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Background.** Over the course of a few decades, the City of Chula Vista acquired land with the intent of attracting a university and established a specific plan for the development of a university, residential units, commercial uses, and open space purposes. In total, the City of Chula Vista acquired 384 acres of land for development. However, land that is owned by a public agency is subject to the SLA. The SLA requires local agencies to first offer surplus land that they plan to dispose, which means to either sell or lease, to affordable housing, schools and open space uses. In order to facilitate development and ease navigating the conditions of sale for agency, a category of exempt surplus land was created for lands subject to a sectional planning document that was approved prior to January 1, 2019 and the parcels had dedications, agreements, or grant deeds limiting the use of the land to specified purposes.
- 2) **Bill Summary.** Among the numerous conditions of the exemption, current law requires that the land be developed at a minimum density of 10 units per acre across the entire sectional planning area and that 25% of those units be dedicated to lower income households.

This bill amends the existing exemption in the SLA for the City of Chula Vista's University Innovation District: Sectional Planning Area Plan (UI-SPA) by:

- a) Excluding housing designated for students, faculty, or staff of an academic institution from the total number of units used for the calculating the minimum number of affordable units to be constructed.
- b) Allowing student, staff, and faculty housing to count toward the minimum density requirements of the exemption.
- c) Establishes minimum requirements for student housing that will be counted toward the minimum density.

This bill is sponsored by the City of Chula Vista.

- 3) **Author's Statement.** 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."
- 4) **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 dispose, which means to sell or lease for fifteen years or longer, the land to recoup their investments. The 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 public agencies, nonprofit housing developers, schools, and parks and recreation departments. After notifying these groups that the land is available, the disposing agency must negotiate in good faith with these interested parties to try to come to agreement for 90 days before the local agency can dispose of the surplus land.
- 5) **Agency's Use.** Generally, 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." AB 480 (Ting), Chapter 788, Statutes of 2023, allowed certain types of exempt surplus land to be declared ministerially, in-lieu of a public hearing. The local agency must publish a notice and allow for public comment for a minimum of 30 days. Land that is being used for an agency's work or operations is not surplus and therefore is not disposed. Pursuant to GOV § 54221 (c), "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.

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:

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

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. However, some exemptions have requirements for eligibility. If the disposal is not consistent with the exemption claimed, the disposition may be illegal. All other surplus land must follow the procedures laid out in the SLA before a local agency can dispose of it.

- 6) **Process of the SLA.** 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 affordable housing developers, commonly referred to as "housing sponsors," notifying them that land is available for the following purposes:

- a) Low- and moderate-income housing;
- b) Park and recreation, and open space;
- c) School facilities; or
- d) 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:

- a) Limits the power of any local agency to sell or lease surplus land at fair market value or less than fair market value;
- b) Prevents a local agency from obtaining fair market value;
- c) Limits a local agency's authority or discretion to approve land use, zoning, or other entitlement decisions in connection with surplus land; or
- d) 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 the appraised fair market value at the time of disposition for the 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 explaining 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.

- 7) **SLA Reform.** In 2023, AB 480 (Ting), Chapter 788 and SB 747 (Caballero), Chapter 786 made significant changes to the SLA. Together 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, AB 480 and SB 747:
- a) Defined “dispose” to include leases of longer than 15 years that are entered into on or after January 1, 2024, but excluded leases of terms shorter than 15 years and leases where no development or demolition will occur;
 - b) Applied penalties to leases that violate the SLA, but provided that penalties don’t apply to non-substantive violations of the SLA;
 - c) Added numerous categories of exempt surplus land, such as properties smaller than one-half acre, specified mixed-use developments and developments on larger sites that include affordability requirements, airport land, and others;

- d) Authorized disposal of certain categories of exempt surplus land without a public hearing, as long as specified notice is provided;
 - e) Established additional types of activities that explicitly qualify as “agency’s use”; and
 - f) Extended provisions that allow projects with an exclusive negotiating agreement in place to follow a previous version of the SLA.
- 8) **The City of Chula Vista’s University Development Plans.** According to the City of Chula Vista’s adopted UI-SPA, “For more than 20 years the City of Chula Vista has maintained a vision to locate university and innovation land uses in the Otay Ranch. 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) as a means of implementing the City of Chula Vista General Plan. The GDP/SRP resulted from the culmination of years of planning and provides clear direction and policies regarding the type and intensity of uses that will occur within the roughly 23,000-acre Otay Ranch.”

The UI-SPA guides the implementation of a portion of the GDP/SRP. Planning for the Otay Ranch is a cooperative effort between the City of Chula Vista and the County of San Diego. 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. Within both the City of Chula Vista and the County of San Diego, the Otay Ranch GDP/SRP is implemented through additional, more detailed planning processes prior to the subdivision of land. The City of Chula Vista requires the preparation and adoption of “Sectional Planning Area” plans. The County of San Diego requires “Specific Plans.” The requirements of each process are substantially similar. 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.

- 9) **Land Acquisitions and Restrictions.** The City of Chula Vista acquired parcels over several decades in order to facilitate the development of a university campus. The history of the land acquisition dating back to 1990 and continuing through 2014 is detailed in the city’s UI-SPA. The parcels were acquired through a variety of agreements that placed various legal restrictions on the type of developments allowed on the land. City staff consulted with HCD and sought an SLA exemption from HCD for these parcels that are critical to the UI-SPA. Chula Vista staff prepared a memo for the Chula Vista City Council detailing the status of the parcels and the legal restrictions applicable to each parcel.
- 10) **The City of Chula Vista and HCD.** Each parcel identified by the city is subject to some form of legal restriction that controls for the type of development allowed on the parcel. The SLA allows for exemptions for parcels owned by local agencies that are subject to legal restrictions that are not imposed by the local agency (e.g. not imposed by the local agency’s zoning code). Legal restrictions, such as deeds and covenants that are not imposed by the local agency that owns the land are not uncommon. However, the SLA only allows exemptions for legal restrictions that would make housing prohibited, unless there is a feasible method to satisfactorily mitigate or avoid the prohibition on the site.

The City of Chula Vista maintains that the restrictions on the property prohibit housing on the parcels, other than such housing necessary to fulfill the public purpose for university or

educational uses, and that the disposal of the parcels should not be subject to the SLA. In analyzing the restrictions, HCD generally found that while the restrictions may limit the type of development allowed on the property to specific purposes (e.g. university development) the restrictions either do not “make housing prohibited,” or they allow for some form of housing development (e.g. university housing). With the exception of a parcel subject to a superior court order, HCD further found that the city was a party to the original agreements and, therefore, could not claim that the restrictions were not imposed by the city.

HCD informed the City of Chula Vista that it must follow the standard SLA protocols when disposing of the property. Additionally, HCD noted for several of the properties that “the city may include a reasonable condition or restriction in the notice of availability (NOA) of the Property i.e., the City may include in the NOA that, because the Property was acquired for university purposes, the City envisions a development project on the Property that includes both housing and university uses.”

- 11) **A Beautiful Sight.** In order to address the problem above, AB 837 (Alvarez) of 2023 which created the exemption for Chula Vista’s sectional planning area with specified conditions. The bill ultimately stopped in Senate Local Government Committee. However, substantially similar policy was established via a budget trailer bill, AB 129 (Committee on Budget), Chapter 40, Statutes of 2023.
- 12) **Policy Considerations.** 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, to be affordable to lower income households. This calculation would yield a minimum of 960 units of affordable housing.

$$(384 \text{ acres} * 10 \text{ units per acre}) *.25 = 960 \text{ affordable housing units}$$

The UI-SPA identifies housing for students, staff, and faculty housing and separately market rate housing units, which is interpreted to be units open to the community. According to the UI-SPA, the planning area will include 2 million square feet of market rate housing, which equates to a proposed 2,000 units. Applying the 25% affordable housing dedication requirement to just the proposed 2,000 market rate units would yield a minimum of 500 units of affordable housing.

While unlikely, this bill, as currently written, could allow for a scenario in which the sectional planning document is amended and all of the housing units are designated for students, staff, and faculty housing and none are open to the community. In this scenario, 25% of zero housing units available to the community would equal to zero units of affordable housing. The Committee may wish to consider if it is prudent to clarify that a minimum number of affordable housing units must be constructed as a condition of this exemption.

- 13) **Committee Amendments.** To address the policy consideration above, the Committee may wish to consider the amendment below:

(IV) ~~At least a minimum~~, 25 percent of the units that **are proposed by the sectional planning document as adopted prior to January 1, 2019 and are** not designated for students, faculty, or staff of an academic institution **shall be constructed and** dedicated to lower income households, ~~as defined in Section 50079.5 of the Health and Safety Code,~~ at an affordable

rent, ~~as defined by Section 50053 of the Health and Safety Code,~~ or an affordable housing cost, ~~as defined by Section 50052.5 of the Health and Safety Code,~~ and subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units, unless a local ordinance or a federal, state, or local grant, tax credit, or other project financing requires a longer period of affordability.

(ia) “Lower income household” shall have the same meaning as Section 50079.5 of the Health and Safety Code.

(ib) “Affordable rent” shall have the same meaning as defined in Section 50053 of the Health and Safety Code.

(ic) “Affordable housing cost” shall have the same meaning as defined in Section 50052.5 of the Health and Safety Code.

14) **Related Legislation.** SB 79 (Wiener) includes public transit operations in the definition of “agency’s use” and allows a public transit operator to use the land for commercial or industrial activities as defined. This bill is in Senate Housing Committee.

15) **Previous Legislation.** AB 837 (Alvarez) of 2023 would have exempted the disposition of land subject to an existing section planning area document that meets specified conditions related to affordable housing from the Surplus Land Act.

16) **Arguments in Support.** The City of Chula Vista writes in support, “Since the adoption of the Otay Ranch General Development Plan in 1993, the City of Chula Vista has pursued a vision of locating a university within eastern Chula Vista. This vision is also reflected in the Otay Ranch General Development Plan and Sectional Planning Area Plan for a new UID. Under the adopted planning documents that govern the development of the site, the UID will accommodate up to 20,000 students with an innovation district capable of building approximately 10 million square feet of mixed-use development, inclusive of 4 million square feet of academic space, 2 million square feet of commercial space for business innovation uses, and 3.6 million square feet of housing.

“The City has committed to allocating 25 percent of the entitled housing units as affordable. While this commitment has not changed, restrictions on ‘affordable housing’, as defined by the U.S. Department of Housing and Urban Development (HUD), does not allow for student and faculty housing to be designated as affordable. Proper planning for student housing is critical in developing a new university. Therefore, AB 76 seeks to clarify the affordability requirement by excluding housing designated for students, faculty, and university employees from the affordable housing ratio, reaffirming the City’s intent to develop the UID in a manner consistent with the existing land use entitlements for the project.”

17) **Arguments in Opposition.** None on file.

18) **Double-Referral.** This bill is double-referred to the Assembly Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Chula Vista (Sponsor)

California Association for Local Economic Development

Opposition

None on file.

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