



10844 Ellis Avenue  
 Fountain Valley, CA 92708  
 714.962.2411  
[www.ocsan.gov](http://www.ocsan.gov)

December 15, 2020

Director Gustavo Velasquez  
 California Department of Housing and Community Development  
 2020 West El Camino Ave.  
 Sacramento, CA 95833  
 Submitted via email to: [publiclands@hcd.ca.gov](mailto:publiclands@hcd.ca.gov)

**RE: Surplus Land Act Draft Guidelines [As Issued November 13, 2020]**

Dear Director Velasquez

The Orange County Sanitation District (Sanitation District) submits this letter in response to the California Department of Housing and Community Development (HCD) request for public comment on draft guidelines for the Surplus Land Act (SLA). The Sanitation District is respectfully opposed to the draft guidelines unless they are amended to address our serious concerns.

The Sanitation District is a public agency that provides wastewater collection, treatment, and recycling for approximately 2.6 million people in central and northwest Orange County. The Sanitation District is a special district that is governed by a 25-member Board of Directors comprised of 20 cities, four special districts, and one representative from the Orange County Board of Supervisors. The Sanitation District has two operating facilities that treat wastewater from residential, commercial and industrial sources. The Sanitation District has acquired land that is not currently used for structures, facilities, access roads and parking, but is critical for (1) construction staging; and (2) preservation of space for future processes. For instance, when we need to replace a structure that is at the end of its useful life, we will have to build a new structure on an empty space, bring that process into operation, before demolishing an existing structure. Without these spaces throughout both of our treatment plants and at our pump stations, we may have to operate at a reduced capacity during at least part of the construction, increasing the risk of sewage spills and permit violations.

The draft guidelines were presumably promulgated to assist HCD with the implementation of Assembly Bill (AB) 1486 (Ting), which mandates local agencies adhere to certain requirements when disposing surplus land. Specifically, the Sanitation District is opposed to the guidelines as currently drafted because:

1. **Section 102(i)** of the draft guidelines provides an inaccurate definition for “disposition of surplus land” that has no basis under the law. HCD fails to provide any support for the conclusion that “disposition of surplus land” includes sale **or lease** of local agency-owned land formally declared surplus:

- Serving:
- Anaheim
  - Brea
  - Buena Park
  - Cypress
  - Fountain Valley
  - Fullerton
  - Garden Grove
  - Huntington Beach
  - Irvine
  - La Habra
  - La Palma
  - Los Alamitos
  - Newport Beach
  - Orange
  - Placentia
  - Santa Ana
  - Seal Beach
  - Stanton
  - Tustin
  - Villa Park
  - County of Orange
  - Costa Mesa Sanitary District
  - Midway City Sanitary District
  - Irvine Ranch Water District
  - Yorba Linda Water District

Page 2

- a. Not a single statute referenced by the guidelines defines “dispose” or “disposition” nor addresses whether an agency leasing surplus land for non-housing purposes constitutes a disposition under the SLA.
  - b. The plain text of the SLA, Cal. Government Code §§ 54220 – 54234, does not define “dispose” or “disposition” to include leasing.
  - c. We can find no precedent or example of any California Appellate Court making the determination that a public agency leasing surplus land is a “disposition” of that surplus land.
  - d. The California Legislature excluded leasing from the definition of “dispose,” by amending AB 1486 in the legislative process to specifically remove any use of the phrase “lease” or “leasing” in conjunction with disposition of surplus land and removed any definition provided for “dispose.”
2. **Section 103(b)(3)** of the draft guidelines, covering surplus land exemptions, fails to include a specific classification for exempt surplus land found in the SLA pursuant to Government Code section 54221(f)(1)(J), which plainly states that real property that is used by a district for agency’s use expressly authorized in 54221(c) is exempt surplus land. This omission must be corrected by revising the HCD guidelines to include a discussion of the exempt surplus land classification permitted under section 54221(f)(1)(J).
3. **Section 400(e)** of the draft guidelines, requiring an agency to provide HCD with written findings and a “notice of exemption determination” at least 30 days prior to disposition of exempt surplus land, has no basis under the SLA.

Under the draft guidelines, attempting to lease land in support of an agency’s governmental function would trigger the requirements for the disposal of surplus land. The guidelines would also make it more difficult to protect an agency’s land for critical governmental use and planning purposes.

Our opposition is not a challenge to the demand for affordable housing, but rather a validation of the need for local flexibility when it comes to proper governmental land use management.

For these reasons, the Orange County Sanitation District respectfully requests HCD amend the SLA Draft Guidelines to correct the aforementioned issues.

Sincerely,



David John Shawver  
Board Chairman