



COACHELLA VALLEY WATER DISTRICT

Established in 1918 as a public agency

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December 7, 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

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

Dear Director Velasquez:

Coachella Valley Water District (CVWD) 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 (Draft Guidelines). CVWD respectfully opposes the Draft Guidelines unless they are amended to address serious concerns.

CVWD was formed in 1918 to protect and conserve local water sources. Since then, CVWD has grown into a multifaceted agency that delivers irrigation and domestic (drinking) water, collects and recycles wastewater, provides regional storm water protection, replenishes the groundwater basin and promotes water conservation.

The Draft Guidelines were presumably drafted to assist HCD with the implementation of AB 1486 (Ting), which mandates local agencies adhere to certain requirements when disposing of surplus land. However, these Draft Guidelines are problematic in several ways.

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:
 - a. Not a single statute referenced by the Draft 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. No precedent or example can be found of any California Appellate Court making the determination that a public agency leasing surplus land is a “disposition” of that 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.”

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In light of Governor Newsom's Executive Order N-42-20, which suspended public water agencies' ability to shut-off customers for non-payment of bills during the COVID-19 public health crisis, many water service providers will need seek revenue from other sources in the absence of federal or state financial relief. Cell tower leases are often a simple and effective way for local agencies to bring in additional non-ratepayer revenue, which does not carry the limitations associated with Proposition 2018 that ratepayer revenue does. As outlined in the next section below, such sites are generally not suitable for public housing and would create public safety concerns if leased or sold for such purposes. The ability to enter into leases without regulatory obstacles is critical for CVWD's financial health.

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 Guidelines to include a discussion of the exempt surplus land classification permitted under section 54221(f)(1)(J).

In particular, because the exemption laid out in GC §54221(f)(1)(J) is not included in the Draft Guidelines, even though the Draft Guidelines do not carry the force of law, CVWD would not be able to dispose of lands that are not suited for public housing. Many CVWD lands fall into such a category due to their proximity to critical water or wastewater infrastructure. If public housing were built in close proximity to certain CVWD facilities, there would be public safety concerns, as well as serious concerns regarding the safety and integrity of CVWD facilities.

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 Surplus Lands Act.

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.

For these reasons, CVWD respectfully requests HCD amend the Draft Guidelines to correct the aforementioned issues. If you have questions about the comments outlined above, please do not hesitate to contact me at (760) 398-2661 ext. 3564 or kjohnson@cvwd.org.

Sincerely,



Kristen Johnson, J.D.
Government Affairs Specialist

cc: Alyssa Silhi, Legislative Representative, California Special Districts Association