



State Surplus Property

The State Should Use Its Available Property
More Effectively to Help Alleviate the
Affordable Housing Crisis

March 2022

REPORT 2021-114





CALIFORNIA STATE AUDITOR

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March 22, 2022

2021-114

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

With more than 1.4 million low-income California households unable to access affordable housing in 2021, the rapid creation of additional affordable housing is vital to the State. To address this need, the Governor issued Executive Order N-06-19 (executive order) in 2019, which prioritized the use of excess and surplus state-owned land to support the development of affordable housing.

To assess state agencies' management of surplus properties and their compliance with the Governor's order, the Joint Legislative Audit Committee directed my office to conduct an audit. Our assessment focused on the Department of General Services (DGS), the California Department of Housing and Community Development (HCD), the California Department of Transportation, and the Department of Developmental Services.

Although we found that the executive order has proven effective in its intent, and we estimate that it could ultimately make way for more than 32,000 housing units, our evidence shows that DGS could accelerate the process by which it makes properties available. Of the 92 properties DGS plans to release for long-term leases and development as affordable housing, it has only done so with 19 of those properties. The department anticipates that it will take seven years to make the remaining 73 properties available, but the addition of just one staff member could reduce that time by more than two years.

The executive order required DGS to complete a comprehensive review of state property in 2019, but it did not set a requirement for additional periodic assessments. Therefore, without changes to state law, California may lose this focus on affordable housing creation. Amending state law to incorporate the benefits of the executive order would facilitate the identification of additional excess state property and the ultimate creation of more affordable housing.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael Tilden". The signature is stylized and cursive.

MICHAEL S. TILDEN, CPA
Acting California State Auditor

Selected Abbreviations Used in This Report

CDE	California Department of Education
CSU	California State University
DDS	Department of Developmental Services
DGS	Department of General Services
HCD	California Department of Housing and Community Development
JCC	Judicial Council of California
SPI	State Property Inventory
UC	University of California

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Summary

Results in Brief

The State's need for affordable housing is significantly outpacing its production, which is negatively affecting Californians. According to 2021 reports by the California Housing Partnership, 1.4 million low-income California households lacked access to affordable housing. Despite its need for affordable housing, the State has annually fallen 100,000 units short on its affordable housing creation goals for many years. As a result, the California Department of Housing and Community Development (HCD) reports that high housing costs often result in families becoming behind on their rent and going without food, utilities, or health care. Further, a lack of affordable housing correlates with a significant increase in the number of people experiencing homelessness, which negatively affects both adults and children. For example, 97 percent of school-age children who experience homelessness move as many as three times in a single year, and one-third of them repeat a grade. Moreover, the mortality rate for individuals experiencing homelessness is four to nine times greater than that of the general population. To help address this need for affordable housing, the Governor and the Legislature have turned to the use of excess public land for such housing.

In January 2019, the Governor responded to the shortage of affordable housing in California in part by issuing an executive order that directed the Department of General Services (DGS) to conduct a comprehensive survey of all state-owned land, identify properties not currently needed by the State, and offer those properties suitable for affordable housing for long-term lease. The executive order set an aggressive schedule for DGS to complete its review. The Governor issued the order in mid-January 2019 and required DGS to complete its review by the end of April 2019. To meet this deadline, DGS reviewed more than 44,000 parcels of state property and, in so doing, identified 92 properties suitable for affordable housing that it plans to offer for development. As of March 2022, DGS has offered 19 properties for long-term lease, which we estimate will provide more than 1,700 units of affordable housing to Californians. We estimate that the remaining 73 properties could ultimately provide more than 30,000 units of affordable housing for Californians.

However, the executive order did not establish a timeline for DGS to offer the properties it identified for affordable housing and, at its current rate, it will take DGS seven years to put forward all of the remaining properties. DGS indicated that its planned rate for offering properties depends on the availability of staff and of state and federal funding to support development. If DGS had sufficient staff to offer 15 properties for development each year rather than

Audit Highlights . . .

Our audit found the following regarding state agencies' management of excess properties to support the creation of affordable housing:

- » *The Governor's 2019 executive order prioritized the use of excess state-owned land to support the development of affordable housing.*
- » *The executive order required DGS to conduct a rapid and comprehensive survey of all state-owned land to identify properties not currently needed by the State and offer for long-term lease those properties suitable for affordable housing development.*
 - *DGS identified 92 properties suitable for affordable housing that it plans to offer for development.*
 - *As of March 2022, DGS had offered 19 of those properties.*
 - *DGS says it lacks the staff necessary to accelerate its property assessment and follow-up activities.*
- » *DGS missed opportunities to consider additional property for affordable housing because it did not always communicate with state agencies about potentially excess property.*
- » *The Governor's executive order did not set a requirement for additional periodic assessments, and without changes to state law, California may lose the order's focus on affordable housing.*

the 10 to 12 it plans on currently, this would decrease the time required to find developers for the remaining 73 properties from seven years to fewer than five. Further, HCD stated that if DGS offered more properties more quickly, state and federal funding to support affordable housing development would likely be available.

DGS's identification of all state properties suitable for development was likely hampered by the executive order's time constraints. To accomplish its review within three and a half months, DGS relied heavily on the professional judgment of its staff rather than on specified criteria. Given the time constraints, this reliance was not unreasonable; however, it led to some inconsistencies in DGS's decision-making. Of the 40 parcels we reviewed, we identified four that seemed to merit further discussion with the respective agency. However, DGS did not follow up regarding these parcels and instead eliminated them from further consideration. For example, we found a property possessed by the California Department of Education (CDE) with large parking lots that appeared to be in limited use and that might have been suitable for affordable housing. However, DGS did not follow up on this property until our inquiry. Although CDE indicated it was fully using the property, we question that assertion, as state law defines full utilization as 100 percent during every business day of the year. Also, DGS did not contact certain agencies that possess parcels it had identified as potentially viable. For example, because these entities are not directly administered by the executive branch, DGS did not contact the University of California and California State University, which together possess 50 such parcels. Contacting these and other agencies regarding potentially viable parcels it identified during its review may allow DGS to identify additional affordable housing possibilities.

The State's existing system for disposing of its unneeded property—the surplus property process—has not been as effective at supporting affordable housing creation as the executive order has been. From 2010 through 2020, DGS disposed of 64 surplus properties through the surplus property process. However, although state law contains a preference for surplus property to be used for affordable housing, in that same period DGS reported that only seven properties ended up supporting such housing. In contrast, since DGS completed its review of state property under the executive order in 2019, it has already offered 19 properties for development as affordable housing, the equivalent of nearly three decades of development under the surplus property process. Although the executive order did not create an ongoing process when it required DGS to identify state property and offer it for development, ensuring that efforts made under the executive order

become a standard part of the State's property management system will further increase the State's ability to respond to the affordable housing crisis.

Further, with the additional improvements we recommend here, recent changes to state law aimed at creating more affordable housing opportunities from the excess property of local agencies could be made more effective. For more than 40 years, state law has authorized local agencies to sell land they no longer need for development as affordable housing. However, state law now requires local agencies that plan to dispose of their existing property through sale or lease to take a more active role in supporting the creation of affordable housing. For example, the new law requires local agencies to notify affordable housing developers of their intent to list local property for disposal, and if a developer indicates interest in a property, the law requires the local agency to engage in good faith negotiations with that entity for 90 days. However, we identified certain improvements that are necessary if the law is to be fully effective, such as expanding the methods available to report noncompliance with this requirement and clarifying the process of responding to violations that HCD identifies. By clarifying and strengthening its processes, HCD can better ensure that local agencies consistently offer their surplus property for use in affordable housing.

Summary of Recommendations

To the Legislature

To ensure that the creation of affordable housing made available under the excess state property executive order continues, the Legislature should enact state laws that require DGS and HCD to continue to carry out the duties prescribed by the executive order. Specifically, the law should require DGS to develop criteria to evaluate state parcels for affordable housing use by September 2022 and to conduct a review as it did for the executive order by July 2023 and every four years thereafter. Further, it should require DGS and HCD to prioritize the identified properties for development.

To DGS

To determine whether additional viable properties exist for affordable housing development, by September 2022, DGS should contact the remaining agencies that possess properties it identified as potentially viable and determine the viability of those parcels.

To identify additional state land suitable for affordable housing development, DGS should develop criteria to evaluate state parcels for affordable housing use by September 2022 and conduct a review as it did for the executive order by July 2023 and every four years thereafter.

To increase the number of properties offered for affordable housing annually and to conduct a periodic review of all state-owned properties, DGS should seek additional staffing as appropriate to provide dedicated support to the program, either by transferring existing positions or seeking a budget change for additional positions.

To HCD

To better promote development of affordable housing on local surplus land, by January 2023 HCD should update its guidelines on local surplus property with respect to reporting noncompliance with the requirements to notify developers and engage in good faith negotiations.

Agency Comments

DGS and HCD generally agreed with our recommendations and noted that they would implement them.

INTRODUCTION

Background

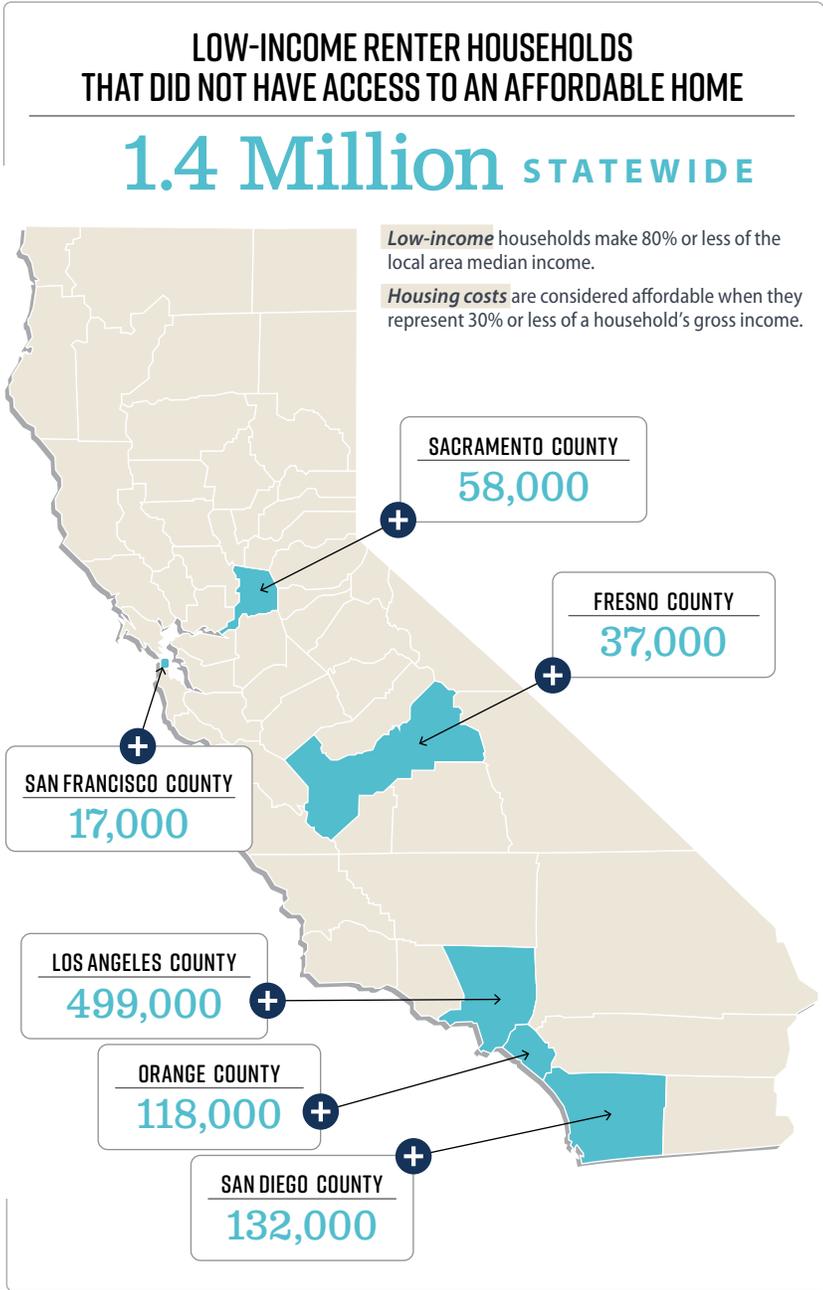
According to 2021 reports by the California Housing Partnership, 1.4 million low-income California renter households lacked access to affordable housing.¹ As Figure 1 indicates, the California Department of Housing and Community Development (HCD) defines low-income households as those earning 80 percent or less of the area's median income. HCD considers housing costs to be affordable when they are 30 percent or less of a household's gross income. In the counties the Legislature identified for this audit—Fresno, Los Angeles, Orange, Sacramento, San Diego, and San Francisco—the number of low-income renter households that lacked access to an affordable home ranged from 17,000 in San Francisco County to 499,000 in Los Angeles County.

California's extreme housing costs—the third highest in the nation—have resulted in financial hardships for many of its residents, particularly those in households that HCD classifies as extremely low-income—those households making between 0 percent and 30 percent of an area's median income. As of March 2021, 78 percent of California's extremely low-income households were paying more than half of their income toward housing. This condition contributes to overcrowding—which HCD defines as more than one person occupying a room—as lower-income families have attempted to save on housing costs. According to HCD data, California has the second highest percentage of overcrowding in the United States.

The lack of affordable housing also leads to a host of other negative outcomes for Californians. For example, families often fall behind on rent and go without food, utilities, or health care. A lack of affordable housing also correlates with more people experiencing homelessness, an issue that has been exacerbated by the economic impact of the COVID-19 pandemic. More than 95 percent of school-age children who experience homelessness move as many as three times in a single year, and many will repeat a grade. Youth who experience homelessness are also more likely to fail courses, have disciplinary issues, and drop out of high school. Even worse, people experiencing homelessness have a significantly higher mortality rate than that of the general population.

¹ The California Housing Partnership is a private, nonprofit organization created by the Legislature in 1988 with the mission of providing technical assistance and advocacy for affordable housing in California.

Figure 1
The State Is Experiencing an Affordable Housing Crisis



Source: California Housing Partnership Affordable Housing Needs reports from each of the State's counties.

State Property

To ease the affordable housing crisis, the State has focused some of its efforts on using excess state property to support the creation of affordable housing, as detailed later in this Introduction. The State owns more than 3,100 properties composed of more than 44,000 parcels of land, as Figure 2 shows. These land holdings amount collectively to more than 2.9 million acres, an area about the size of Los Angeles County. State agencies possess this land and use it for a variety of purposes, including maintaining office space for state operations, providing parks to the public, and furnishing campuses for higher education. The agencies that possess the largest percentage of the State's acreage are the Department of Parks and Recreation, the California Department of Fish and Wildlife, and the California State Lands Commission. In addition, the California Department of Transportation (Caltrans) maintains numerous land holdings that serve as components of the State's transportation system.

The Legislature empowers the Department of General Services (DGS) with overseeing the administration of certain centralized services for state agencies, including the leasing and purchasing of real property. Acting as the State's property manager, DGS acquires and disposes of property for the State after legislative approval or approves property leases as necessary for state agencies to conduct their business. DGS also provides planning, construction management, and other services to state agencies to support the use of the properties those agencies possess.

Excess and Surplus Property

To improve the State's management of its real property holdings, state law requires all state agencies, with certain limited exceptions, to report annually to DGS on the land they possess. DGS relies on these self-reported data to populate the State Property Inventory (SPI), a database that catalogs much of the State's real property.² When reporting to the SPI, state agencies must provide information on topics that include the size of the property, its location, and any major structures located on it.

² Caltrans tracks property that serves as part of the State's highway system separately from the SPI. However, Caltrans reports to DGS on other property it possesses, such as its field offices.

Figure 2
The State Has Significant Land Holdings



Source: State law, the SPI database, and DGS documentation.

As part of their duties related to the SPI, state agencies must also report, with certain limited exceptions, the extent to which they are or anticipate using the property they possess.³ State law requires state agencies to identify for DGS any property they possess that is not in use, and it defines such property as *excess property*. Once an agency reports excess property, DGS determines whether another state agency may be able to make use of it. If DGS identifies such an agency, it may transfer possession of the property to that agency. When DGS is not able to identify an alternate use for the property, it includes the property in an annual report it issues to the Legislature, which may declare the land *surplus property*. DGS may then sell or lease the property. Since 2009, state law has set a preference for DGS to sell or lease surplus property in a manner that supports affordable housing development, when possible. Between 2010 and 2020, DGS sold, leased, or transferred 64 surplus properties, and seven of these properties ultimately went on to support affordable housing, providing more than 500 units of affordable housing. Figure 3 shows the State's process for disposing of surplus property.

State and Federal Financial Resources for Affordable Housing

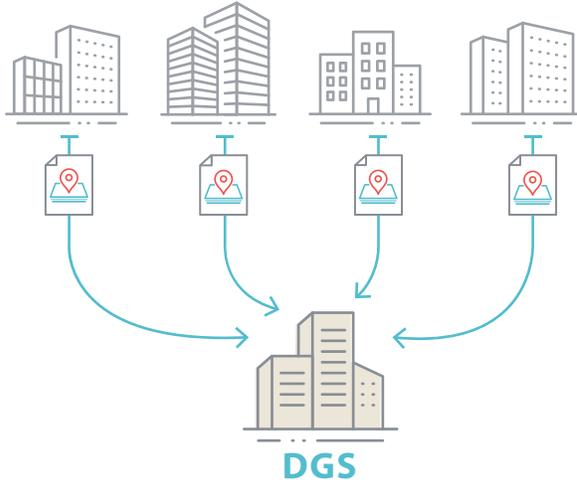
The State plays a critical role in responding to California's affordable housing crisis by supporting the development of affordable housing. In its fiscal year 2019–20 annual report, HCD announced that about \$195 million in grant funds were available for local governments to create rental housing and homeownership opportunities for extremely low- to moderate-income households. These funds support programs that increase the supply of affordable homes in California, from providing general funding opportunities for affordable housing development to assisting specific subsets of California's population, such as families experiencing homelessness. In addition to grants, the State provides financing to support affordable housing creation through the California Housing Finance Authority. In fiscal year 2019–20, it provided more than \$860 million in financing to support affordable housing units.

The federal government also allows states to issue tax-exempt debt and to distribute federal tax credits for housing projects. The California Debt Limit Allocation Committee (Debt Limit Committee) under the State Treasurer's Office (Treasurer's Office) authorizes the issuance of tax-exempt bonds to fund housing projects based on a federal cap proportional to the State's population. Based on this cap, the Debt Limit Committee authorized approximately \$4 billion in tax-exempt bonds in each of

³ State law provides specific exceptions for the types of information certain entities are required to furnish to DGS. These entities must still report on their current and projected use of each property. However, Caltrans is not required to furnish information on existing highways.

Figure 3
The State’s Process for Disposing of Surplus Property

1 Agencies submit annual reports to DGS by December 31 each year detailing the properties they control and identifying any that are unused or underused (excess properties).



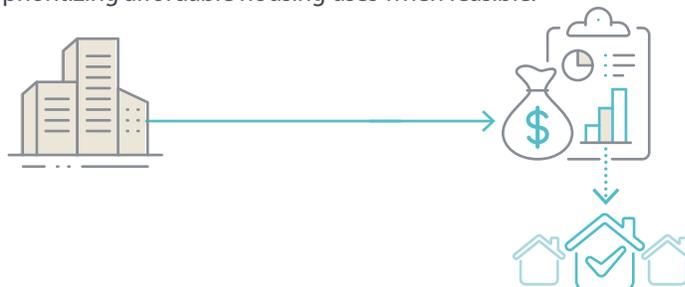
2 Upon receipt of agencies’ reports, DGS evaluates whether any other state agencies can use properties identified as excess.



3 DGS annually reports to the Legislature on excess properties that cannot be put to another beneficial use and requests authority to sell or lease those properties as surplus property.



4 Upon legislative approval, DGS sells or leases the surplus property, prioritizing affordable housing uses when feasible.



Source: State law and DGS reports to the Legislature.

the calendar years 2020 and 2021. These bonds provide financing for the development of affordable multifamily housing and related projects. Another Treasurer's Office committee, the California Tax Credit Allocation Committee (Tax Credit Committee), allocates federal tax credits to affordable housing projects each year and awarded \$1.1 billion in tax credits in calendar year 2020. Typically, investors in affordable housing projects provide up-front equity to a project in exchange for these tax credits. The federal government also supports direct grants for states to award funds for affordable housing construction and infrastructure, such as the \$325 million Disaster Recovery Community Development Block Grant.

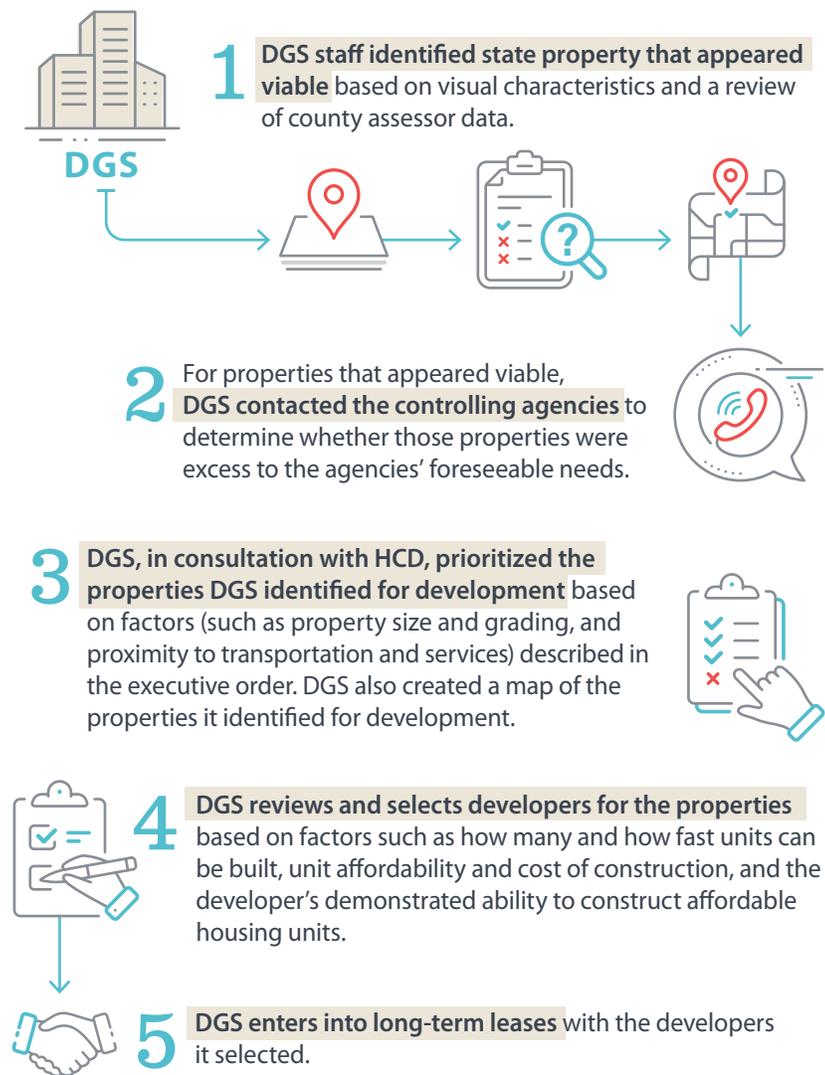
In addition to its federal credit awards, the Tax Credit Committee allocates accompanying state tax credits. The State has typically awarded about \$100 million or less of such credits annually, but beginning in calendar year 2020, the Legislature began authorizing additional \$500 million allocations on a year-to-year basis to augment existing awards. In 2020, this allocation brought the state-funded tax credit awards for affordable housing creation to \$581 million. Despite these investments, the State has annually fallen 100,000 units short on its affordable housing creation goals for many years, according to the California Housing Partnership. HCD has identified a number of barriers leading to this shortfall, including local opposition to new affordable housing projects; high land and construction costs; local government incentives to focus more on sales-tax-generating development—retail stores and entertainment venues, in particular—as opposed to residential development; and lengthy local regulatory reviews.

The Executive Order

To supplement the State's other efforts and to overcome some of the barriers described above, in January 2019, the Governor issued Executive Order N-06-19 (executive order) to prioritize further the use of excess and surplus state-owned land to support affordable housing. The executive order required DGS to complete a comprehensive survey of all state-owned land by the end of April 2019, three and a half months after the Governor issued the order. As Figure 4 illustrates, to accomplish this survey, DGS staff identified state property that appeared viable based on its visual characteristics and a review of assessor data such as acreage. It then contacted the agencies that possess the property to determine whether the identified land was available for development. After DGS identified the properties, it collaborated with HCD to create tools to assist in prioritizing the properties for development. DGS then created a comprehensive map of the selected properties as the executive order required. Ultimately, DGS reported that it had met the Governor's deadline, had reviewed over 44,000 state-owned

parcels, and had identified 92 properties in 28 counties as suitable for development for affordable housing. DGS intends to offer these properties to developers over time, select developers based on requirements listed in the executive order, and then sign long-term leases to allow development of affordable housing to proceed.

Figure 4
DGS and HCD Created a Process for Implementing the Executive Order



Source: The Governor's executive order, DGS's website, and interviews with DGS staff.

However, not all state-owned property is suitable for development. For example, the SPI indicates that the California State Lands Commission (commission) possesses about 460,000 acres of state property, but the commission's mission is to protect and enhance those lands as well as the public's access to them. Similarly, the Department of Developmental Services (DDS) possesses a large property—the Fairview Development Center (center)—that may be suitable for development as affordable housing, but it was unavailable for selection during DGS's review because the center closed in December 2019, after the initial selection process was completed, and has since been used as part of the State's response to the COVID-19 pandemic. DGS has not made a formal decision as of February 2022 on whether it will seek to dispose of the property through a surplus property sale or offer it for development under provisions of the executive order. Further, many state agencies reported that they were fully using the land they possess. Table A.1 in Appendix A lists agencies with properties that DGS identified as suitable for development of affordable housing.

The executive order offers novel benefits for housing creation. Unlike the State's surplus property program, the executive order directs DGS to enter into long-term land leases with affordable housing developers rather than selling properties. Implementing long-term leases allows the State to encourage the creation of affordable housing in several ways. First, as a lease, the property continues to belong to the State, and the executive order states that such property is exempt from local land use controls, which can impede housing development. Further, leases allow developers to obtain property for development at below-market rates, which allows developers to overcome one of the significant barriers to affordable housing in California—the high cost of land. The remainder of this report examines how the State can continue, enhance, and accelerate the benefits of the executive order process in the future.

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Audit Results

DGS's Identification of Affordable Housing Opportunities Will Benefit Thousands of Californians, but the Department Should Accelerate Efforts to Develop Properties

The executive order set an aggressive schedule for DGS to identify state property suitable for development into affordable housing. As we describe in the Introduction, the executive order required DGS to complete a comprehensive survey of all state-owned land by April 30, 2019—roughly three and a half months after the Governor issued the order. To meet this deadline, DGS had to review 44,000 parcels during the time available, gather additional information from the agencies that possessed the parcels it deemed potentially viable, and create a comprehensive map of the available properties it identified. Based on these efforts, DGS identified 690 potentially viable properties. After further review with state agencies, DGS reduced the number of these potentially viable properties to the 92 sites it identified for development under the executive order, as Figure 5 shows.

As of March 2022, DGS has offered 19 of these state properties for development. As Figure 6 shows, each of the 19 properties is proceeding through the planning, development, or construction phases of the program. As part of this process, DGS reviews proposed developments; identifies proposals that meet the State's goals, including elements such as affordability, cost-efficiency, and construction innovation; and ultimately selects a developer. Table A.2 in Appendix A provides a list of planned completion dates, the number of expected residences associated with each of the awarded projects, and the status of those projects DGS has not yet awarded to a developer.

Thousands of families will have access to affordable housing created under the executive order. We estimate that the initial 19 properties DGS offered for development will provide more than 1,700 units of affordable housing. The properties are located in areas of major affordable housing need, such as Los Angeles and San Francisco. They will provide an important source of new housing at affordable prices for low-income and extremely low-income renter households in California. The units range from studios to three-bedroom units, providing opportunities for affordable rental housing to families of various sizes. In San Francisco, for example, the average monthly rent in 2021 was \$4,756 for a three-bedroom unit. In contrast, a project created under the executive order plans to offer more affordable rentals between \$800 and \$2,400 per month for a three-bedroom unit, depending on income. Moreover, we estimate that the 73 properties not yet offered for development could support the creation of more than 30,000 additional affordable housing units statewide.

We estimate that the initial 19 properties DGS offered will provide more than 1,700 units of affordable housing and are located in areas of major affordable housing need, such as Los Angeles and San Francisco.

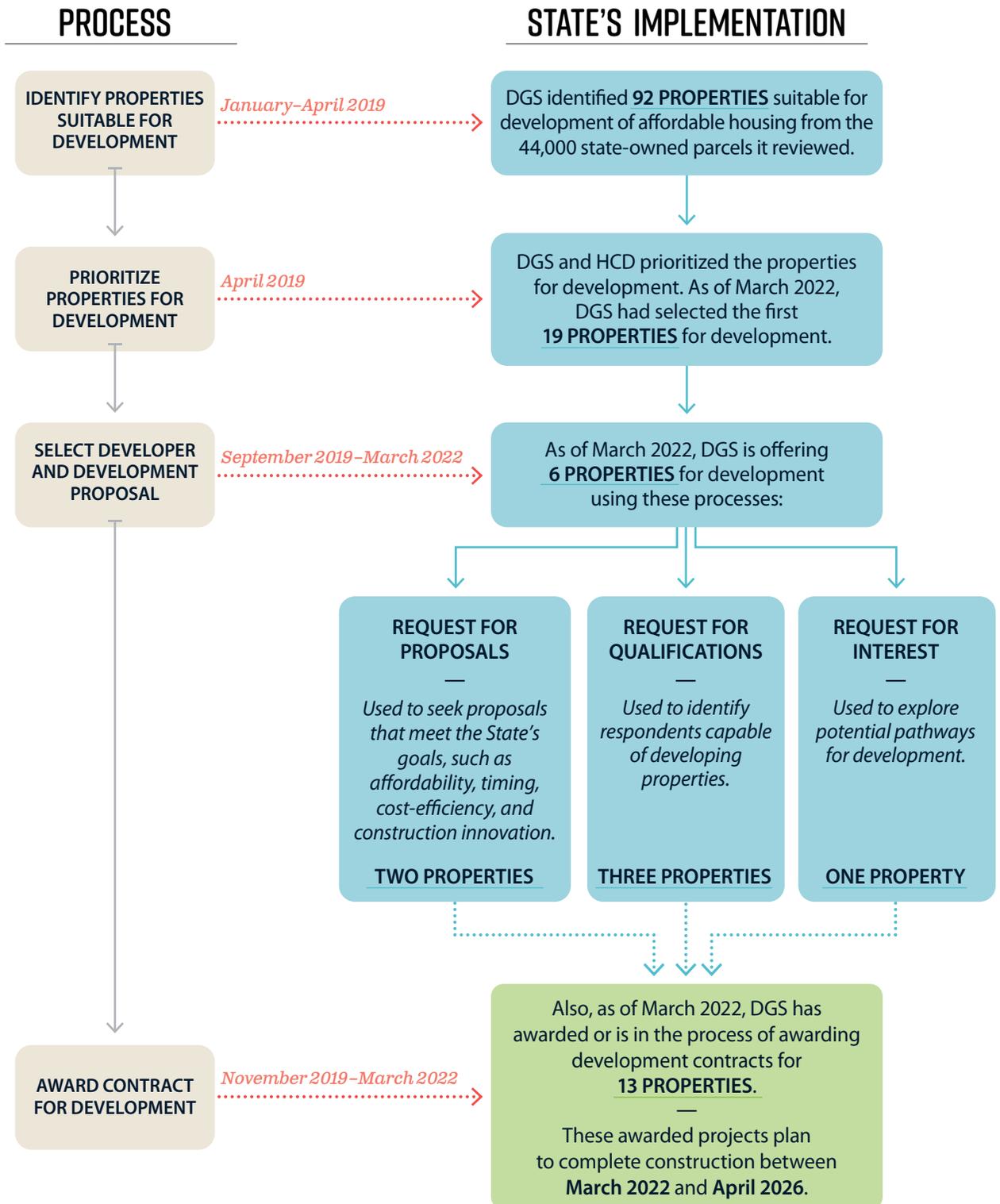
Figure 5
DGS Identified 92 State Properties to Be Used for Affordable Housing Development



Source: DGS' documentation.

The executive order emphasized the development of affordable housing on state property as a high priority, but aside from a directive to begin issuing requests for proposals (RFPs) and accepting responses by September 2019, it did not establish a required schedule for DGS to award the development contracts. Instead, the Governor directed state agencies, including DGS, to use all existing legal and financial authority to prioritize the development of property under the order. Since it completed its identification of state properties for development in 2019, DGS has offered as many as eight properties per year to developers. In future years, DGS plans to offer annually between 10 and 12 properties for development.

Figure 6
 Since 2019, DGS Has Offered 19 of the State Properties It Identified for Development as Affordable Housing



Source: DGS's website; DGS requests for interest, qualifications, and proposals; and discussions with DGS staff.

The executive order tasked DGS with both identifying and leasing the excess property suitable for affordable housing, which has increased DGS's property management workload without increasing its staffing.

DGS's deputy director of real estate services (deputy director) stated that DGS's goal is to offer available state property for development as rapidly as its staffing and the financial support for development allow. At a rate of 10 properties per year, it would take DGS another seven years to award contracts for the remaining 73 properties it identified as suitable. DGS indicated that it could increase the number of properties it offers annually to 15 with one additional dedicated staff member. DGS could then decrease the time from seven years to fewer than five.

DGS's assertion that it needs more staff to increase offerings is reasonable given that the executive order increased the complexity of DGS's process for addressing excess and surplus state property. Before the executive order, excess property was identified by the agency that possessed it. In contrast, the executive order tasked DGS with both identifying and leasing the excess property suitable for affordable housing, which has increased DGS's property management workload without increasing its staffing. For example, the 92 properties DGS identified under the executive order are nearly three times the number of excess properties identified under the surplus property process from 2010 through 2020. If DGS assigned additional staff primarily to offering the State's unused property for affordable housing development, the benefits of the executive order process could be accelerated to aid thousands of low-income Californians.

Ensuring Full Use of Available Funding Opportunities Could Accelerate Affordable Housing Development

Building more affordable housing under the executive order will also depend on effective use of the State's significant but competitive funding opportunities. In issuing the executive order, the Governor directed state agencies, including DGS and HCD, to use all their existing legal and financial authority to prioritize and expedite the development of affordable housing on excess state-owned property. The State and the federal government provide financial support for creating affordable housing through a variety of programs and avenues, including tax credits, tax-exempt bonds, and grants. Our 2020 report identified the equivalent of more than \$8 billion available to fund affordable housing in California in calendar year 2019, an amount that is generally increasing annually.⁴ That audit recommended legislation, some of which was later enacted, that would require HCD to include information in its annual housing report on available funding and

⁴ Report 2020-108, *California's Housing Agencies: The State Must Overhaul Its Approach to Affordable Housing Development to Help Relieve Millions of Californians' Burdensome Housing Costs.*

housing need. Although the environment for obtaining state and federal funding opportunities remains competitive, HCD believes that if DGS were able to offer annually more sites for development, there is sufficient capacity in the developer community to obtain funding and develop them.

Increases in tax credit availability have, for example, supported affordable housing creation generally and may allow for increased development under the executive order. The Tax Credit Committee awards tax credits that investors can buy to realize tax savings over time while providing developers with capital. The Tax Credit Committee reported awarding \$1.1 billion in tax credits in 2020, after the Legislature authorized an additional \$500 million in state tax credits. The Legislature made the extra \$500 million in tax credits available again in 2021, which should allow the Tax Credit Committee to again award about \$1 billion in 2021. The Governor's proposed budget for fiscal year 2022–23 includes the same additional sum. Increasing the funding available to support affordable housing programs will help developers construct more housing, highlighting the opportunity DGS and HCD have to increase the number of projects they are able to offer through the executive order process.

Increasing the funding available to support affordable housing programs will help developers construct more housing, highlighting the opportunity DGS and HCD have to increase the number of projects they are able to offer.

The Executive Order's Short Time Frame Limited DGS's Ability to Identify Some Properties for Affordable Housing

Due in part to the significant time constraints of the executive order, DGS's review of state property relied heavily on professional judgment rather than on specific criteria. As noted earlier, DGS had to complete a comprehensive survey of all state-owned land within three and a half months of the issuance of the Governor's order. As a result, DGS did not establish criteria defining the elements necessary to consider a parcel as potentially viable for affordable housing before its staff needed to begin reviewing sites. Instead, DGS indicated its staff made the initial assessment of whether parcels might be suitable for development using their professional judgment, with instructions to err on the side of considering properties viable. If DGS considered a parcel potentially viable, its staff generally followed up with the agency that possessed the property to gather additional information, such as whether the agency was fully using the parcel. DGS's management then made a determination as to whether a parcel would be offered for development. Given the time constraints DGS faced, its reliance on professional judgment was not unreasonable. However, the lack of criteria led to missed opportunities by DGS to identify some potential properties for further review.

DGS did not maintain documentation detailing its staff's rationale for removing 42,800 parcels from further consideration, but our review of excluded properties indicates that its determinations were mostly reasonable. For example, we observed that DGS appropriately removed parcels from consideration if they were located in areas too remote to be used for affordable housing, if they were in heavily industrialized areas, or if they were in use. However, we found that four of the 40 parcels we reviewed likely should have resulted in discussions with the possessing agency. Figure 7 provides an example of this issue for a facility possessed by the California Department of Education (CDE). After we brought this item to DGS's attention, the deputy director stated that DGS contacted CDE to gather additional information. CDE then indicated that it was fully using the property. We reached out to CDE to obtain additional perspective, but it did not provide us information on how it was fully utilizing the property. It is unclear whether CDE's assertion meets the requirements of state law, which defines *full utilization* as 100 percent use during every business day of the year. The properties we identified do not necessarily reflect additional properties that should be developed as affordable housing; instead, they illustrate the types of additional opportunities that DGS should have pursued under a less stringent deadline and with established criteria.

Figure 7
An Example of a Site DGS Excluded From Follow-Up That Was Potentially Viable



DGS eliminated from further review this state property located in Fresno and controlled by the California Department of Education (CDE) without documented rationale or contact with the controlling agency. Available documentation over multiple years indicates that both parking lots highlighted in yellow saw limited use. Contacting CDE would have allowed DGS to assess whether any portion of the property could be made available for development.

Source: DGS documentation.

DGS's ability to develop property under the executive order is contingent on the approval of the agency that possesses the property. Although DGS is the State's business management entity, state law does not vest DGS with the authority to determine whether a department is fully using property it possesses. In the second phase of its review, DGS contacted the agencies that possessed many of the 1,200 parcels it determined were potentially viable to inquire whether the properties were available for development. Based on this contact, agencies either indicated that they were fully using the property, reported that the property had issues such as pollutants that would preclude its use, or made the property available for development.

We found that DGS's decisions to eliminate parcels it initially considered potentially viable were generally reasonable. For example, in several instances, Caltrans required those parcels for operation of the State's highway system. In other instances, DGS reported that identified properties had been transferred to a local government or were being used as a wildlife sanctuary. Despite the general reasonableness of DGS's decisions, we noted that it did not record whether it contacted the agencies that possessed 180 of the 1,200 parcels it identified as potentially viable but later eliminated. DGS's deputy director stated that gaps in its documentation were generally the result of meetings his team conducted but did not document. He believes that staff may have created email records. Any such contact was not documented in DGS's spreadsheet that tracked its review. If DGS conducts this type of review in the future—as we recommend that it should—DGS will need to retain its documentation so that subsequent reviews can be conducted efficiently.

The deputy director also noted that DGS held no discussions with the possessing agencies in some cases. For example, DGS identified as potentially viable a number of sites administered by the Department of Food and Agriculture and located on properties possessed by district agricultural associations that operate county fairs. However, DGS did not follow up on these sites. According to the deputy director, doing so would have required DGS to speak to each district agricultural association instead of talking directly to the Department of Food and Agriculture. He noted that DGS lacked the time to complete such discussions but could follow up at a later date. After completing its review under the executive order, DGS followed up with one fairground, has selected a developer, and is negotiating the project details and the ground lease for a 110-acre site for affordable housing at the San Joaquin County Fairgrounds. Contacting other possessing agencies regarding parcels DGS identified as potentially viable is important, as that outreach may yield additional properties for development.

Although DGS is the State's business management entity, state law does not vest DGS with the authority to determine whether a department is fully using property it possesses.

If DGS had consulted with UC, the CSU, and JCC to discuss property availability, the agencies might have elected to participate in the program.

DGS also identified about 50 potentially viable parcels the University of California (UC) and California State University (CSU) systems possess and 15 parcels possessed by the Judicial Council of California (JCC). The executive order expressly encouraged voluntary cooperation between state entities; however, DGS did not pursue any of these. DGS's deputy director stated that because these entities are not directly administered by the executive branch, they are not required to follow the executive order. Therefore, DGS considered all three entities effectively off limits. However, as the executive order was created to develop land that is excess to state agencies' foreseeable needs, there would be no detriment to seeking cooperation among government entities. In fact, in response to our inquiry, the JCC noted that repurposing surplus court property to help address the State's housing challenges is an idea that should be explored and that it is ready to discuss the suitability of surplus sites with DGS. Further, when we contacted UC, its associate vice president of energy and sustainability noted that UC welcomes discussions with DGS concerning properties that DGS identifies as potentially viable for future development. In addition, the CSU told us it would be willing to have discussions with DGS. Figure 8 provides examples of the types of property DGS identified as potentially viable that these agencies possess. If DGS had consulted with UC, the CSU, and JCC to discuss property availability, the agencies might have elected to participate in the program.

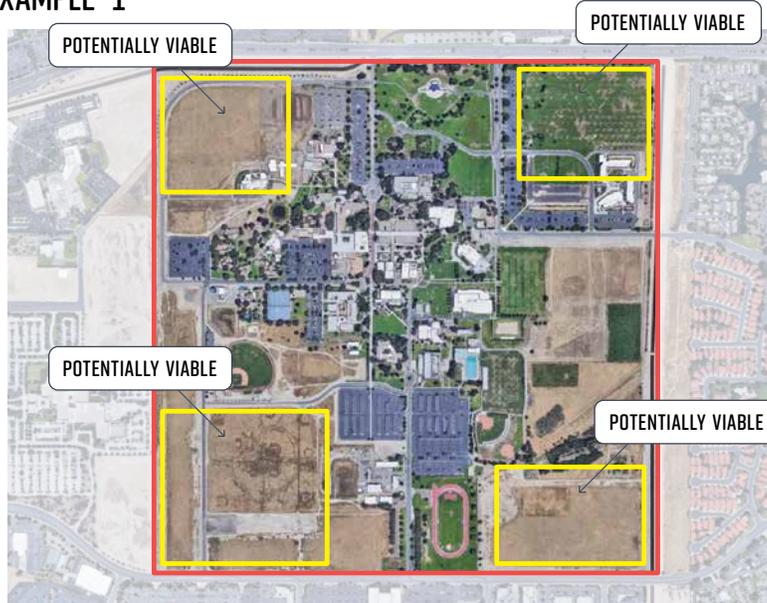
Developing property possessed by UC or the CSU would likely require an additional level of effort from DGS. For example, some potentially viable properties possessed by the UC or CSU systems may have been deeded to those universities with specific requirements about their use. Identifying such restrictions, and addressing them with the possessing entity, would likely take more time than the discussions DGS held with other state agencies and may not have been possible under the executive order's time limitations. Further, developing such sites may require legislative action or an interagency agreement. Despite these challenges, there is value in DGS initiating discussions with all state entities when reviewing potential properties for affordable housing, particularly sites that would be near college campuses.

Without Changes to State Law, the State May Lose the Executive Order's Focus on Affordable Housing

California's existing surplus property process established in state law helps the State prepare for economic uncertainty but is of limited use in identifying affordable housing opportunities. State law generally requires that proceeds generated from the sale of surplus property support the State's budget stabilization account, known as the rainy day fund, which it uses to mitigate budget shortfalls.

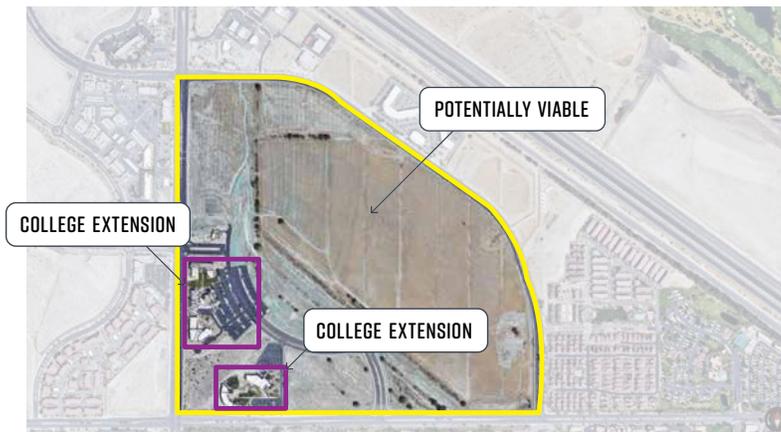
Figure 8
Although Identified as Potentially Viable, DGS Did Not Follow Up to Discuss the Availability of Properties That UC and the CSU Possess

EXAMPLE 1



DGS documentation indicates staff considered the four corners of CSU Bakersfield to be potentially viable parcels for affordable housing development, as the areas highlighted in yellow appear to be mostly unused or undeveloped. DGS removed the property from consideration without documenting its rationale. Contacting the CSU would have allowed DGS to determine whether any of the areas it identified were available for development.

EXAMPLE 2



The State owns the Palm Desert property outlined in yellow, which appears to be largely unused and undeveloped. The areas highlighted in purple are college extensions (Cal State San Bernardino Palm Desert Campus and UC Riverside-Palm Desert). Although it identified the unused portions of this property as potentially viable, DGS removed the property surrounding the college extensions from consideration.

Source: DGS documentation.

In the period from 2010 to 2020, DGS disposed of or transferred 64 surplus properties, providing monetary support to the State. In 2018, the year before the Governor issued the executive order, the surplus property process generated about \$57 million. Moreover, as part of its assessment of potentially surplus property, DGS transferred possession of at least eight excess properties between agencies, thereby limiting new property acquisition or lease costs to the State. As such, the surplus property process is an important tool for the State in both limiting expenses and generating revenue.

However, in the last decade, the surplus property process has led to the creation of only limited affordable housing despite the fact that since 2009 state law has set a preference for DGS to dispose of surplus property to support affordable housing development when possible. Between 2010 and 2020, DGS transferred six properties between state agencies and disposed of 58. Of those 58 properties, seven, or about 12 percent, went to affordable housing development. According to the deputy director, DGS's surplus property reports indicate when a specific property is being sold to an affordable housing developer directly, which is not common. He said that one should not infer that properties sold to other entities did not get repurposed to affordable housing. However, often the types of properties state agencies identify as excess—such as ranger stations or fire lookouts—are not conducive to housing. The deputy director also reported a general lack of offers by affordable housing developers.

Although the executive order has proven effective at generating affordable housing, without further action the State's process for identifying excess property will return to its earlier, less active approach.

Although the executive order has proven effective at generating affordable housing, without further action the State's process for identifying excess property will return to its earlier, less active approach. The executive order required DGS to review state property, but it did not create a requirement that DGS supplement its initial review with periodic assessments. DGS completed its review in 2019 and continues to review all state properties identified as excess for suitability for the program. However, the deputy director indicated DGS has no plans to conduct additional periodic reviews similar to what was conducted in 2019. The deputy director believes such a review could be effective, as departmental needs for properties can change over time, but noted that DGS lacks the staff and resources necessary to conduct ongoing reviews and develop the affordable housing already identified. He added that if DGS had the staff to conduct future reviews the State's excess property holdings would likely be sufficient to maintain the affordable housing program over the long term.

An additional reason to continue the executive order process is the potential increase in excess property as state agencies transition to having their staff work remotely. The COVID-19 pandemic has affected how and where the State conducts its business activities.

As the pandemic spread throughout California in 2020, state workers transitioned to working remotely based on emergency orders from the Governor and local officials. In October 2021, the State published new directives requiring all agencies and departments to incorporate nonemergency telework as a work option. The statewide telework policy requires each department to establish, by October 2022, a written policy that allows for telework. According to DGS, one of the goals of this policy is to reduce the amount of required state office space. This reduction may free up additional properties for affordable housing development. However, without an ongoing process and the necessary resources for identifying such properties and offering them for affordable housing, the State may miss opportunities to further address the affordable housing crisis.

Reducing the amount of required state office space may free up additional properties for affordable housing development.

Resolving complexities surrounding the properties possessed by Caltrans may require legislative action. According to Caltrans, much of its property must be put to a transportation-related use and parcels are generally sold at fair market value, with limited exceptions. As of March 2022, the Legislature is considering a bill to allow property Caltrans possesses to be sold to local governments for affordable housing purposes at the original purchase price. Although the bill is currently focused on selling property to local governments, there is discussion of amendments to include the sale or transfer of Caltrans' property to DGS. Caltrans indicated that it is committed to helping Californians through the executive order process.

The State Does Not Have Adequate Assurance That Its Inventory of Land Holdings Is Accurate

The State Property Inventory (SPI) may not be accurate because not all agencies are meeting the reporting requirements and because DGS has identified mismatches between the SPI and county property data. State law requires each state agency to report to DGS on all real property it possesses by December 31 of each year. This reporting populates the SPI. The information must include a certification by the head of the agency that the information provided is correct. Despite these requirements, in fiscal year 2019–20, one of the 38 agencies that possess state property failed to report to the SPI, and seven agencies failed to report in a timely manner. In fiscal year 2020–21, three agencies failed to report on the property they possessed and four reported after the deadline. DGS indicated that, although it provides multiple reminders, the agencies did not communicate the rationale behind their late reporting or their failure to report. DGS believes that disruptions from the COVID-19 pandemic, staff turnover, and the time needed for executive review may be factors in noncompliance. As a result,

The State's current SPI reporting process in state law does not require DGS to ensure the accuracy of the information it provides to the Legislature.

the data the Legislature relies on for the State's management of its real property holdings are not complete and some were not provided to DGS in a timely manner.

Further, the State's current SPI reporting process in state law does not require DGS to ensure the accuracy of the information it provides to the Legislature. State law generally requires state agencies to self-report and certify information on the land they possess, but we identified no law that expressly requires DGS to verify the submitted information. DGS indicated that it does not independently verify the information it receives because the volume of that review process would be significant and the law requires state agencies to submit and certify the information. Further, DGS stated that it lacks the staff necessary to conduct even limited reviews or audits. However, without such verification, the State cannot ensure that state agencies are proactively identifying excess property that the State could use for affordable housing or for reducing state expenses.

When DGS began its review of all state-owned land in response to the executive order, it used property data from each of the 58 county assessors rather than relying on data from the SPI. The deputy director said that DGS chose to use county assessor data because it had recently identified instances where some state-owned properties seemed to be missing from the SPI database. DGS reported that it evaluated the data it received from county assessors to ensure that it would be able to review substantially all state-owned property. To do this evaluation, DGS compared county assessor data to SPI data related to four counties: Sacramento, San Francisco, Inyo, and Modoc. DGS indicated that while it found that the SPI data were sufficiently reliable, there were discrepancies between county assessor data and the SPI database.

To determine whether DGS's method of identifying state-owned property was reliable, we also compared data from the SPI with county assessor data from six counties: Fresno, Los Angeles, Orange, Sacramento, San Diego, and San Francisco. As Figure 9 shows, we identified more than 500 parcels in county assessor data that state agencies had not reported to the SPI. Our review in all six counties identified parcels owned by the State—according to the assessor data—but not reflected in the State's property management system. Based on the discrepancies we found, DGS's decision to use county assessor data for its review of state property, rather than its own database, was reasonable.

Figure 9
DGS's Statewide Property Inventory Lacked Data on More Than 500 Parcels Across Six Counties

County	State-Owned Parcels in County Data but Not in the SPI
Fresno	92
Los Angeles	323
Orange	74
Sacramento	42
San Diego	3
San Francisco	21
TOTAL	555

EXAMPLE 1



The Fresno County assessor data indicates the land highlighted in yellow is state-owned, but it is not reflected in the SPI. The proximity to stores, transit, and other residential buildings suggests this property is potentially viable for affordable housing development.

EXAMPLE 2



The Los Angeles County assessor data indicates the land highlighted in yellow is state-owned, but it is not reflected in the SPI. This undeveloped property is near a highway, a large park, and public transit. The nearby residential buildings indicate that this property is potentially viable for development for affordable housing.

Source: Google Maps, DGS documentation, and county assessor records.

Resolving inaccuracies between the State Property Index and county assessors' data may identify additional state-owned properties that can be used for affordable housing.

Although we, like DGS, identified discrepancies between the SPI and county assessors' data, the discrepancies do not mean that the SPI is necessarily inaccurate. Disagreements between these databases could be the result of inaccuracies in local databases. For instance, during its review, DGS identified several properties noted as state-owned in county assessor data that it ultimately identified as having been sold by the possessing agency. In one notable example, data from the Sonoma County assessor identified a property as state-owned and possessed by Caltrans, but DGS learned that the State had sold that property in 1973. According to DGS's deputy director, determining which database is accurate would generally require DGS to review county records, state agency records, and legislative actions related to each parcel, something it lacks the time and resources to do.

Nevertheless, any state-owned land not identified in the SPI and not subject to a reporting exception, such as existing highway property possessed by Caltrans, is effectively unknown to the State. Further, because the State is exempt from local property taxes, inaccuracies in county assessors' data may result in counties receiving less tax revenue than is actually due them, because the counties believe that a property is state-owned when it is not. Ultimately, resolving these inaccuracies may also identify additional state-owned properties that can be used for affordable housing.

Updates to State Law Will Create More Opportunities for Local Development of Affordable Housing

Recent changes to state law require local agencies that plan to dispose of their existing property—by selling or leasing—to take a more active role in supporting the development of affordable housing using their excess property. For more than 40 years, state law has authorized local agencies to sell land they no longer need for development as affordable housing. The 2019–20 legislative session enacted a series of changes to the law surrounding local surplus land that took effect in 2020 and 2021. These updates revised the definition of a local agency to include agencies such as utility providers, park districts, and joint power authorities. The changes also revised the definition of *surplus land* to mean land owned by a local agency that it formally declares in a regular public meeting as surplus and not necessary for the agency's use, and that has not been declared exempt from reporting under state law. State law requires local agencies, before disposing of surplus land, to send a notice of availability to entities including affordable housing developers. Once notice is provided, the interested entities or developers have 60 days to communicate whether they are interested in purchasing or leasing the property. Should an entity or developer express interest, the parties must engage in good faith negotiations for at least 90 days. To ensure compliance, local agencies must provide

information on these notices and negotiations to HCD, which will verify that the notices meet the requirements of state law. Collectively, we call these new requirements and HCD's oversight process the *local surplus property program*.

The local surplus property program should ultimately accelerate the pace at which developers are able to create affordable housing. HCD reported that local agencies provided notices of availability to affordable housing developers for more than 1,000 properties during the first year of this program. However, it often takes affordable housing developments several years to obtain financing and complete construction. HCD acknowledged that the number of affordable housing projects that will result from the first year of the local surplus property program will require more time to determine. However, HCD provided us a list of several proposed projects throughout the State—including up to 1,253 units of affordable housing that it understood to be the result of local agencies offering land under the local surplus property program since 2021.

HCD issued guidelines in 2021 to assist localities in meeting their obligations under the local surplus property program and to explain its oversight role. However, based on issues that have arisen, HCD could improve that guidance. State law authorizes HCD to take actions to enforce the requirements of the local surplus property program, including giving it the authority to assess penalties when local agencies do not address violations. Despite this authority, HCD's existing guidelines do not indicate how it will respond to violations where a locality sells a property without providing the mandatory notice to HCD that the property was available for affordable housing development, and where HCD was not able to issue a notice of violation before the sale.

In 2021, at least two high-profile cases were widely reported by the media involving the forthcoming sale or lease of sports venues where HCD was not provided with mandatory notices. HCD was made aware of the potential sale and lease, despite not receiving notices, and was able to intervene. In December 2021 HCD issued a notice of violation to the City of Anaheim, finding that the city intended to sell its baseball stadium without providing the required notices to HCD and indicating that the city would need to correct its actions. The City of Anaheim disputes this, and does not consider the stadium site to be surplus land. In another case, HCD investigated the City of San Diego in June 2021, after it attempted to enter a long-term lease for the property surrounding a local arena.⁵ In these cases, HCD was able to intervene before sales or leases

HCD's existing guidelines do not indicate how it will respond to violations where a locality sells a property without providing the mandatory notice to HCD that the property was available for affordable housing development.

⁵ HCD closed the San Diego matter after San Diego issued the mandatory notices for the property following a technical assistance letter from HCD. The Anaheim case remains open.

occurred, but because HCD has not documented in its guidelines how it will respond to cases where sales or leases occur before notices of violation are issued, it will need to strengthen and clarify its guidance to include how it will respond in such cases.

Additionally, although HCD's guidelines require local agencies to negotiate in good faith, they do not specify how HCD will enforce this requirement. State law and HCD's guidelines require local agencies to negotiate for up to 90 days with interested affordable housing developers for the lease or sale of a property. However, once the 90 days have expired, a local agency can sell the land for nonhousing purposes if it and the housing developer cannot reach an agreement. Although the guidelines encourage developers to contact HCD if they believe a local agency has negotiated in bad faith, the guidelines do not describe what actions HCD may take to promote good faith negotiations. Because of this lack of specificity, local agencies that do not support the development of affordable housing have an opportunity to stall negotiations with interested local entities or housing developers or to negotiate during the 90-day period without the intention to enter into an agreement. For example, a local government might want to use the land for a purpose likely to bring in more tax dollars than affordable housing. If HCD made the consequences for such actions clear, it could better encourage compliance with state law.

To encourage compliance with local surplus property laws, HCD should increase its outreach to local agencies and interest groups as it currently plans to do.

To encourage compliance with local surplus property laws, HCD should increase its outreach to local agencies and interest groups as it currently plans to do. HCD's enforcement efforts are dependent on receiving required notices from local agencies for review or receiving information on potential noncompliance from interested parties, such as housing advocacy groups. HCD has hosted some presentations on the local surplus property program and set up an informational website, but it has yet to conduct systematic or comprehensive outreach. After the high-profile stadium cases discussed earlier, HCD reported a significant increase in agency contacts about the sale of local surplus property. This increase, coupled with HCD's lack of comprehensive outreach, suggests that local agencies may have misinterpreted or been unaware of the requirements of the local surplus property program and may not have provided notices as required. HCD's deputy director of housing policy development acknowledged that HCD is limited in its ability to detect unreported violations of state law because its staff cannot provide guidance for land transactions about which they are unaware. HCD stated that it plans to conduct more outreach. Further, after we identified the need for a publicly available reporting mechanism for potential local surplus property violations, HCD expanded its existing accountability and enforcement reporting system to include local surplus property. Conducting sufficient outreach will allow HCD to correct more

violations before local agencies sell properties improperly. Preventing and correcting violations will maximize the benefit of the local surplus property program to Californians by supporting the creation of more units of affordable housing.

Recommendations

To the Legislature

To ensure that the creation of affordable housing made available under the excess state property executive order continues, the Legislature should enact state laws to require that DGS and HCD carry out the duties prescribed in Executive Order N-06-19. Further, the Legislature should require the following:

- By September 2022, DGS should develop a set of criteria to consistently evaluate state parcels for suitability as affordable housing sites.
- By July 2023 and every four years thereafter, DGS should conduct a review of all state-owned property and identify parcels that are potentially viable for affordable housing based on the established criteria. Once this review is complete, follow up with all related agencies to determine property availability. After the completion of each review, DGS and HCD should prioritize the identified properties for development.

To facilitate a comprehensive review of state land for affordable housing uses, the Legislature should require DGS to issue, by July 2023 and every four years thereafter, a report on the results of its review of state property, including a determination as to which parcels are suitable for affordable housing and the results of DGS's contact with the possessing agencies.

To ensure that the SPI's reporting of state-owned property is accurate and supports the needs of the Legislature, the Legislature should require DGS to verify annually a sample of the responses agencies provide.

To maximize the amount of affordable housing that can be created using state land, the Legislature should amend state law to allow Caltrans to sell available excess property to DGS at less than current fair market value if that property is to be used for the development of affordable housing.

To DGS

To determine whether additional viable properties exist for affordable housing development, by September 2022 DGS should contact the related agencies for the remaining properties it identified as potentially viable but for which it has not yet gathered additional information and make a determination as to the viability of the parcels those agencies possess.

To identify additional state-owned land suitable for affordable housing development, DGS should do the following:

- By September 2022, develop a set of criteria to consistently evaluate state parcels for suitability as affordable housing sites.
- Beginning by July 2023 and every four years thereafter, conduct and document a review of all state-owned property and identify parcels that are potentially viable for affordable housing based on the established criteria. Once this review is complete, follow up with all possessing agencies to finalize property availability. Finally, DGS should work with HCD to prioritize the identified properties for development.

To increase the number of properties offered for affordable housing annually and to conduct a periodic review of all state owned properties, DGS should seek additional staffing as appropriate to provide dedicated support to the program, either by transferring existing positions or seeking a budget change for additional positions.

To ensure that reporting to the SPI occurs as required, DGS should contact agencies that do not certify their SPI submissions by the deadline to determine the reasons for the delay and assist in correcting the deficiency. DGS should conduct this work annually, beginning with the reports due in December 2022.

To improve the State's ability to track public property, DGS should do the following:

- By September 2022, begin reconciling the SPI and county assessors' real property records and update the SPI as necessary.
- Ensure that county and state real property records remain in alignment by reviewing records and resolving any mismatches in the year before each periodic review occurs.

To HCD

To better promote development of affordable housing on local surplus land, HCD should do the following by January 2023:

- Update its guidelines on the local surplus property law to indicate how it will respond to instances where local agencies do not notify it of their intention to sell property before disposing of it, and where DGS was unable to issue a notice of violation before the sale. Further, HCD should seek legislative changes to the extent it believes they are needed to clarify its authority or the law.
- Update its guidelines related to the local surplus property law to provide information on how it will assess and support good faith negotiations to mitigate the risk that local agencies may negotiate with developers in bad faith.
- Increase outreach as planned to local agencies and interest groups to advise them of the notice requirements of the local surplus property law.

We conducted this performance audit in accordance with generally accepted government auditing standards and under the authority vested in the California State Auditor by Government Code section 8543 et seq. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



MICHAEL S. TILDEN, CPA
Acting California State Auditor

March 22, 2022

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Appendix A

Property Under Development

Through its efforts to respond to the executive order, as of March 2022 DGS had identified and offered 19 properties. Table A.1 lists the number of properties provided by state agencies for use under the executive order generally; Table A.2 details the current status of the 19 properties offered for development, the current status of the project, and the planned date of occupancy.

Table A.1
DGS Identified Excess Properties Suitable for Development as Affordable Housing From 15 State Agencies

AGENCY	NUMBER OF PROPERTIES
Agricultural District	1
California Highway Patrol	3
California Military Department	8
California Tahoe Conservancy	10
Department of Corrections and Rehabilitation	8
Department of Developmental Services	3
Department of Forestry and Fire Protection	1
Department of General Services	10
Department of Parks and Recreation	2
Department of State Hospitals	3
Caltrans	36
Department of Veterans Affairs	1
Department of Water Resources	1
Employment Development Department	3
State Controller's Office	1
Total	91*

Source: DGS's website.

* One additional property resulted from a land swap with a local agency and is therefore not reflected in this total.

Table A.2
Affordable Housing Projects in Development and Production on State Property

PROJECT LOCATION	PROJECT NAME	OFFERED	PROPOSAL DUE* OR AWARDED	CURRENT STATUS (AS OF MARCH 2022)	PLANNED UNITS†	PLANNED PROJECT COMPLETION
Sacramento	CADA Courtyard	Sep 2019	Awarded Nov 2019.	Development under way.	56	Jun 2022
Reedley	Guardian Village	Sep 2020	Awarded Jun 2021.	Development under way.	48	Mar 2023
Truckee	Truckee Affordable Housing Development	Oct 2020	Awarded Sep 2021.	Development under way.	55	Jul 2023
South Lake Tahoe	Sugar Pine Village	Mar 2020	Awarded Jun 2021.	Development under way.	248	Aug 2023
Clearlake	Clearlake Village	Dec 2020	Awarded Nov 2021.	Development under way.	80	Apr 2024
Placerville	Armory Drive	Dec 2020	Awarded— Contract Pending.	DGS is negotiating the ground lease.	83	May 2024
San Francisco	Turk Street and Golden Gate Avenue	Aug 2020	Awarded— Contract Pending.	DGS is negotiating the ground lease.	270	Jun 2024
Sacramento	Arden Way	Oct 2020	Awarded May 2021.	Development under way.	124	Oct 2024
Riverside	Mulberry Garden Apartments	May 2021	Awarded Dec 2021.	Development under way.	209	Jan 2026
Los Angeles	Alveare	Sep 2021	Awarded— Contract Pending.	DGS is negotiating the ground lease.	303	Apr 2026
Stockton	La Passeggiata	Sep 2019	Awarded Jul 2020.	Start of construction delayed for remediation.	94	TBD
Stockton	Fairgrounds Village	Jul 2021	Developer Selected.	DGS is negotiating the project details and the ground lease.	TBD	TBD
San Quentin	The Village at Oak Hill	Sep 2020	Awarded— Contract Pending.	DGS is negotiating the ground lease.	230	TBD
Montebello	Montebello Armory	Nov 2021	Proposals were received Jan 2022.	In progress. DGS expects to select the developer in Mar 2022.	TBD	TBD
San Diego	Front Street	Nov 2021	Qualifications were due Feb 2022.	In progress. DGS is making a selection based on qualifications, and expects to select a developer in Mar 2022.	TBD	TBD
Sacramento	R Street Warehouse	Dec 2021	Proposals were due Feb 2022.	In progress. DGS expects to select the developer in Apr 2022.	TBD	TBD
Gilroy	Gilroy Armory	May 2021	Qualifications were received Jun 2021.	In progress. DGS is reviewing the results of the environmental review and expects to release an RFP sometime after Apr 2022.	TBD	TBD
Atascadero	Atascadero Armory	May 2021	Qualifications were received Jun 2021.	Progress paused while DGS negotiates a potential land swap with the city of Atascadero.	TBD	TBD
Los Angeles	710 Freeway Property	Dec 2020	Requests for interest were received Feb 2021.	Progress paused to implement provisions of Senate Bill 51.‡	TBD	TBD

Source: DGS's website and staff interviews, and affordable housing project documentation.

TBD = Because these projects are in progress, the planned units and project completion dates have not yet been determined.

* For the projects listed in this table, DGS requested proposals from potential vendors through requests for interest, requests for qualifications, and requests for proposals.

† Excluding the fairgrounds, we estimate the projects that have not yet stated planned unit numbers will offer more than 200 units of affordable housing.

‡ Senate Bill 51 requires Caltrans, under specified circumstances, to offer properties originally purchased for the 710 Freeway corridor to be first offered to current residents before designating the property as excess and making it available for development to address affordable housing needs.

Appendix B

Scope and Methodology

The Joint Legislative Audit Committee (Audit Committee) directed the California State Auditor (State Auditor) to conduct an audit of DGS, Caltrans, the Department of Developmental Services (DDS), and HCD to determine the availability and the extent to which surplus and excess property has been used to support the creation of affordable housing. Specifically, the audit request asks the State Auditor to review DGS’s compliance with Executive Order N-06-19 and the extent to which various agencies participated in these efforts. Table B lists the objectives that the Audit Committee approved and the methods we used to address them.

Table B
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
<p>1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.</p>	<p>Identified and reviewed relevant federal and state laws, rules, and regulations related to the State’s handling of excess property, surplus property, and local surplus property.</p>
<p>2 Evaluate the processes the State uses to identify and report surplus properties, and the roles and responsibilities of Caltrans, DDS, DGS, and HCD in these processes.</p>	<ul style="list-style-type: none"> • Determined compliance with significant components of the executive order by reviewing related documentation and conducting interviews with staff of DGS, Caltrans, DDS, and HCD. • Determined that DDS has no special responsibilities related to surplus property beyond those of other state agencies. We discuss a DDS property that may be available for affordable housing in the Introduction. • Reviewed DGS’s process for selecting property for development under the executive order. We also assessed DGS’s process and criteria for selecting developers and found that it complied with the requirements of the executive order. • Reviewed efforts by DGS and HCD to expedite and prioritize affordable housing development under the executive order. • Reviewed DGS’s process for identifying, disposing of, and reporting on surplus property. • Assessed compliance with applicable legal requirements related to surplus property by reviewing DGS records related to SPI reporting and its outcomes. • Conducted interviews with a selection of agencies to determine why properties they possess were not identified for disposal under the surplus property process but were offered for development under the executive order. The justifications were generally reasonable.
<p>3 Assess the status of the 44,000 parcels identified as surplus by state agencies in 2019, including how many parcels were deemed suitable for affordable housing, the progress and timeline of any housing projects on these parcels, and the reasons why parcels were not considered suitable for housing.</p>	<ul style="list-style-type: none"> • Determined the number of parcels DGS reviewed and initially deemed potentially suitable for affordable housing and the number of parcels it ultimately deemed suitable. • Determined progress and timelines for development of properties under the executive order. • Assessed DGS’s identification of parcels for development under the executive order by reviewing supporting documentation at each phase of the executive order project. • Assessed whether prioritization of executive order property was appropriate by reviewing criteria used in the ranking system, conducting interviews with personnel, and identifying judgmental factors applied to the process. Further, we assessed whether the prioritization of five parcels was reasonable. We found that prioritization efforts were reasonable.

continued on next page...

AUDIT OBJECTIVE	METHOD
<p>4 Determine, to the extent possible, whether the State owns any additional properties beyond the parcels it identified in 2019 that could help meet affordable housing goals in Fresno, Los Angeles, Orange, Sacramento, San Diego, and San Francisco Counties.</p>	<ul style="list-style-type: none"> Reviewed DGS's methodology for comparing SPI and county assessor data. Conducted our own assessment using county assessor data and SPI data for six counties. Assessed the process Caltrans uses to identify and report on highway property available for disposal. Tested a selection of 10 properties to determine whether internal processes appeared reasonable and complied with selected elements of state law and the executive order. We found Caltrans to be substantially in compliance with these requirements.
<p>5 For a selection of parcels that the State has identified as surplus properties suitable for affordable housing in Fresno, Los Angeles, Orange, Sacramento, San Diego, and San Francisco Counties, determine the following:</p> <ol style="list-style-type: none"> The steps needed to carry out the executive order to build cost-effective housing developments on these parcels. The process, timelines, and stakeholders involved in identifying properties to transfer, dispose of, or sell to local governments or affordable housing organizations. The number of properties with active plans to build affordable housing. For the properties without active plans, whether the departments are working to overcome any obstacles to using these surplus properties to develop affordable housing. 	<ul style="list-style-type: none"> Documented the steps needed to carry out the executive order on all 19 properties DGS has offered for development and the steps required for those properties DGS has not yet offered for development. Determined whether additional affordable housing opportunities existed in properties identified as surplus property. Assessed whether DGS's and HCD's rationale for the pace at which DGS would offer properties was reasonable. Assessed whether Caltrans was working to overcome any obstacles to identifying or providing property for development under the executive order. We determined that Caltrans is complying with the executive order.
<p>6 Evaluate the engagement of Caltrans, DDS, DGS, and HCD with local governments and affordable housing organizations by doing the following:</p> <ol style="list-style-type: none"> Analyze the effectiveness and transparency of these agencies' engagement with local governments and affordable housing organizations in Fresno, Los Angeles, Orange, Sacramento, San Diego, and San Francisco Counties. Identify the agencies responsible for ensuring that local governments develop affordable housing from surplus properties and their plans for doing so. 	<ul style="list-style-type: none"> Reviewed available outreach documentation. Conducted interviews with local agencies, housing advocacy groups, and developer associations to determine the extent of outreach by HCD and DGS. We received minimal responses and did not identify reportable findings. Assessed the extent to which state agencies are responsible for ensuring that local governments develop affordable housing using surplus property. Determined the process HCD uses to oversee local governments related to local surplus property and assessed whether it is sufficient.
<p>7 Review and assess any other issues that are significant to the audit.</p>	<p>Determined the extent to which the executive order's program can assist in resolving the State's affordable housing needs by calculating the amount of potential housing it will provide and reviewing documentation on approved projects. Compared this information with housing needs in our selected counties and across the State.</p>

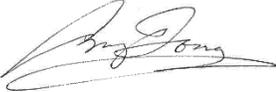
Source: Audit work papers.

Assessment of Data Reliability

The U.S. Government Accountability Office, whose standards we are statutorily obligated to follow, requires us to assess the sufficiency and appropriateness of computer-processed information we use to support our findings, conclusions, or recommendations. In performing this audit, we relied on electronic data files that we obtained from DGS. Specifically, we obtained data from the SPI and the county assessor data DGS used to compare county records with state records. We performed data verification and we discuss our own comparison of county records with DGS's SPI database in the Audit Results. We found the data to be of undetermined reliability due to discrepancies we identified between the county assessors' data and DGS's SPI database.

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DATE: March 7, 2022
TO: Michael S. Tilden, CPA
Acting California State Auditor
FROM: Secretary Amy Tong 
SUBJECT: California State Auditor's Report No. 2021-114

Pursuant to the above audit report, enclosed are the Department of General Services' comments pertaining to the results of the audit.

The Government Operations Agency would like to thank the state auditor for its comprehensive review. The results provide us with the opportunity to better serve our clients and protect the public.



MEMORANDUM

Date: March 3, 2022

To: Amy Tong, Secretary*
Government Operations Agency
915 Capitol Mall, Suite 200
Sacramento, CA 95814

From: **Ana Lasso, Director**
Department of General Services

Subject: **RESPONSE TO CALIFORNIA STATE AUDITOR'S REPORT NO. 2021-114**

Thank you for the opportunity to respond to the California State Auditor's (state auditor) Report No. 2021-114, *State Surplus Property: The State Should Use its Available Property More Effectively to Help Alleviate the Affordable Housing Crisis*, which addresses recommendations to the Department of General Services (DGS) resulting from its audit. The following response addresses each of the recommendations.

OVERVIEW OF THE REPORT

DGS has reviewed the findings, conclusions and recommendations presented in Report No. 2021-114, and generally agrees with the state auditor's recommendations.

DGS has enthusiastically embraced its new role as developer of affordable housing on state property and welcomes feedback on the program. Since Executive Order N-6-19 was issued in January 2019, DGS has endeavored to continually improve and evolve program, including working with the Legislature on both funding and statutory changes to more effectively facilitate housing on excess state property. DGS has, and will continue to, make every effort to ensure available excess property is prioritized for housing development where feasible.

DGS is firmly committed to the Executive Order and to helping the state address its critical housing shortage by leveraging state property.

* California State Auditor's comments appear on page 47.

Amy Tong

-2-

March 3, 2022

RECOMMENDATIONS

RECOMMENDATION # 1: *To determine whether additional viable properties exist for affordable housing development, by September 2022 DGS should contact the related agencies for the remaining properties it identified as potentially viable but for which it has not yet gathered additional information and make a determination as to the viability of parcels those agencies possess.*

DGS RESPONSE # 1:

DGS agrees with the recommendation. For those agencies that DGS believes it has not yet discussed potential properties, DGS concurs with reaching out to discuss potential sites. However, DGS notes that several of those agencies have independent authority to manage real property and would likely require legislative action to prioritize affordable housing projects.

①

RECOMMENDATION # 2: *To identify additional state-owned land suitable for affordable housing development, DGS should do the following:*

- *By September 2022, develop a set of criteria to consistently evaluate state parcels for suitability as affordable housing sites.*
- *By July 2023 and every four years thereafter, conduct and document a review of all state-owned property and identify parcels that are potentially viable for affordable housing based on the established criteria. Once this review is complete, follow up with all possessing agencies to finalize property availability. Finally, prioritize the identified properties for development.*

DGS RESPONSE # 2:

DGS generally agrees with the recommendation. While qualitative criteria was used for DGS' initial property search (such as general adjacency to residential developments, site grading, apparent underutilization, etc.) a formalization of these criteria could prove helpful. With respect to ongoing property reviews, DGS agrees to evaluate the potential workload and related staffing needs for an ongoing review of state properties.

②

Amy Tong

-3-

March 3, 2022

RECOMMENDATION # 3: *To increase the number of properties offered for affordable housing annually and conduct a periodic review of all state owned priorities, DGS should seek additional staff as appropriate to provide dedicated support to the program either by transferring existing positions or seeking a budget change for additional positions.*

DGS RESPONSE # 3:

DGS agrees with the recommendation. Additional staffing resources could increase the speed in which excess state properties can be offered for redevelopment into housing. DGS agrees to discuss the recommendation with the Government Operations Agency to determine if a request for additional staffing can be supported in a future budget process.

RECOMMENDATION # 4: *To ensure that reporting to the SPI occurs as required, DGS should contact agencies that do not certify their SPI submissions by the deadline to determine the reasons for the delay and assist in correcting the deficiency. DGS should conduct this work annually, beginning with the reports due in July 2022.*

DGS RESPONSE # 4:

③

DGS agrees with the recommendation. While DGS' regular procedures include multiple follow-ups with agencies that fail to submit certified SPI submissions on time, DGS agrees to continue this process.

RECOMMENDATION # 5: *To improve the State's ability to track public property, DGS should do the following:*

- *By September 2022, begin reconciling the SPI and county assessors' real property records and update the SPI as necessary.*
- *Ensure that county and state real property records remain in alignment by reviewing records and resolving any mismatches in the year before each periodic review occurs.*

Amy Tong

-4-

March 3, 2022

DGS RESPONSE # 5:

DGS agrees with the recommendation. DGS agrees to discuss the recommendation with the Department of Finance and determine if a legislative request for additional staffing is prudent.

CONCLUSION

DGS is firmly committed to the continuous improvement of the State's management of its real property holdings as required by state law. This includes the development of affordable housing on excess state property as required by Executive Order N-6-19. As part of its continuing efforts to improve those processes, DGS will take appropriate actions to address issues presented in the report.

If you need further information or assistance on this issue, please contact me at (916) 376-5012.



Ana Lasso
Director

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE DEPARTMENT OF GENERAL SERVICES

To provide clarity and perspective, we are commenting on the response to our audit report from the Department of General Services (DGS). The numbers below correspond with the numbers we have placed in the margin of DGS's response.

As we note on page 22, CSU, the UC, and the JCC have all indicated that they are willing to have discussions with DGS concerning the property they possess.

①

DGS attempts to downplay our concerns with its review of properties suitable for affordable housing. We describe on page 19 that DGS relied heavily on professional judgment and note that a lack of criteria may have caused DGS to miss opportunities to identify more properties for review. Thus, we recommend on page 32 that DGS develop a set of criteria to consistently evaluate state parcels.

②

We acknowledge on page 25 that DGS provided multiple reminders to agencies that failed to certify their submission to the SPI. However, we also indicate that the agencies did not communicate the rationale behind their failure to report. Our recommendation is intended to build on DGS's current efforts so that DGS will determine the reason behind deficient reporting and assist in correcting it.

③

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State of California
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

Gavin Newsom, Governor
Lourdes M. Castro Ramirez, Secretary

March 7, 2022

Michael S. Tilden
Acting State Auditor
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

RE: Agency Response to 2021-114 State Surplus Property

Dear Mr. Tilden:

Thank you for the opportunity to review and provide comments to the audit pertaining to the efforts of the Department of Housing and Community Development (HCD) to use state excess property and local surplus land for affordable housing development.

The Business, Consumer Services and Housing Agency (Agency) and HCD are committed to maximizing opportunities for all Californians to have a stable, affordable place to call home. Agency and HCD recognize that public lands are an effective land use and policy tool to expand housing production.

As noted, HCD and the Department of General Services (DGS) are effectively making state excess property available to repurpose for affordable housing development under Governor Newsom's Executive Order N-06-19 (EO). The HCD and DGS team have created a development pipeline of more than 3000 homes in less than three years, and at least 2000 more homes are anticipated based on the current open solicitation process.

Simultaneously, HCD is working with local public agencies to implement the Surplus Land Act (SLA) and make local land available to develop affordable housing options. Since January 1, 2021, HCD's technical assistance on the SLA has led to local agencies disposing of more than 300 properties with more than 4,000 proposed housing units, including 2,521 affordable homes.¹

We appreciate that the audit found that HCD should continue to expand and accelerate work under the EO and SLA as part of the state's effort to address housing need. Attached you will find a detailed response from HCD summarizing the actions underway and plans to address the auditor's recommendations.

If you have any additional questions for my team at Agency or HCD, please contact us at your convenience.

Sincerely,

Lourdes Castro Ramirez, M.A.
Secretary

¹ As of February 14, 2022

500 Capitol Mall, Suite 1850, Sacramento, California 95814 (916) 653-4090 www.bcsh.ca.gov

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STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
OFFICE OF THE DIRECTOR
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-7400 / FAX (916) 263-7417

GAVIN NEWSOM, Governor

March 7, 2022

Michael S. Tilden
Acting California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

RE: Public Lands – State Surplus Property: The State Should Use Its Available Property More Effectively to Help Alleviate the Affordable Housing Crisis

Dear Mr. Tilden,

The Department of Housing and Community Development (HCD) acknowledges receipt by the Business, Consumer Services and Housing Agency of the California State Auditor's (CSA) draft report titled "State Surplus Property: The State Should Use Its Available Property More Effectively to Help Alleviate the Affordable Housing Crisis".

HCD appreciates the auditors' thorough review of the two State Public Land for Affordable Housing Programs that HCD is involved in:

State Excess Sites for Affordable Housing: On January 15, 2019, California Governor Gavin Newsom signed Executive Order N-06-19 that ordered the California Department of General Services (DGS) and the California Department of Housing and Community Development (HCD) to identify and prioritize excess state-owned property and aggressively pursue sustainable, innovative, cost-effective housing projects.

Local Surplus Land Act Implementation, or Local Surplus Property Program: In order to prioritize affordable housing local agencies (e.g., cities, counties, and special districts) must send notices and disposition packages to HCD to ensure compliance with the Surplus Land Act, including its affordable housing provisions.

These two programs are distinct and different from the third program described in the audit, the State's management of its own surplus property, which is within the purview of DGS.

Recommendations for HCD and HCD Responses

While HCD's recommendations are limited with regard to State Excess Sites for Affordable Housing, HCD is proud to be a partner in this work with DGS and appreciates the auditors' call to expand and accelerate this work.

With regard to the recommendations that HCD should do the following by January 2023 to better promote development of affordable housing on local surplus land, HCD provides the following responses:



STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
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GAVIN NEWSOM, Governor

- **Recommendation 1:** Update its guidelines on the local surplus property law to indicate how HCD will respond to instances where local agencies do not notify it of their intentions to or lease property prior to disposing of it. Further, HCD should seek legislative changes to the extent it believes they are needed to clarify its authority under the law.
- **Recommendation 2:** Update its guidelines related to the local surplus property law to provide additional information on how HCD will assess and support good faith negotiations to mitigate the risk that local agencies may negotiate with developers in bad faith.
- **HCD Response: In response to Recommendations 1 and 2, HCD agrees with these recommendations regarding updating its guidelines by this timeline, and to the extent needed will seek legislative change.**

- **Recommendation 3:** Increase outreach as planned to local agencies and interest groups to advise them of the noticing requirements of the local surplus property law. HCD stated that it plans to conduct more outreach. Further, after we identified the need for a publicly available reporting mechanism for potential local surplus property violations HCD expanded their existing accountability and enforcement reporting system to include local surplus property.
- **HCD Response: HCD concurs that this work is critical to our success and is seeking additional resources to address this audit finding. HCD will address this finding to the degree resources for this expansion are available.**

Sincerely,

A handwritten signature in black ink, appearing to read "Gustavo F. Velasquez".

Gustavo F. Velasquez
Director

CALIFORNIA STATE TRANSPORTATION AGENCY

GAVIN NEWSOM, GOVERNOR

California Department of Transportation

CALTRANS INTERNAL AUDITS OFFICE
Administration, MS 80
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Cell: (916) 858-9694
www.dot.ca.gov



March 7, 2022

Mr. Michael Tilden, CPA – Acting State Auditor
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Mr. Tilden:

The Department of Transportation (Caltrans) would like to thank the California State Auditor for their professionalism during this audit. Caltrans appreciates the subject matter of State Surplus Property and for the opportunity to be reviewed as it closely relates to the Caltrans' 2020-2024 Strategic Plan. The Strategic Plan recognizes that, to be a successful transportation agency today and in the coming years, Caltrans must push past its traditional role as primarily an infrastructure organization and begin to function as an organization centered around people. One of the six goals for Caltrans within the Strategic Plan is to advance equity and livability in all communities.

Caltrans appreciates the fact that the Department was found to be in substantial compliance with no audit findings.

Sincerely,

Ben Shelton

Ben Shelton
Audits Chief – Caltrans Internal Audits Office

c: Elissa Konove, Acting Secretary, California State Transportation Agency
Kimberly Erickson, Chief, Right of Way and Land Surveys
Blair Thompson, Chief, Division of Risk and Strategic Management