

**海南自由贸易港闲置土地处置
若干规定**

**Several Provisions of Hainan Free Trade Port on
Unused Land Management**

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(2021年12月1日海南省第六届人民代表大会常务委员会第三十一次会议通过)

第一条 为了有效处置闲置土地和充分利用土地，促进节约集约用地，根据《中华人民共和国海南自由贸易港法》《中华人民共和国城市房地产管理法》等法律、法规，结合海南自由贸易港实际，制定本规定。

第二条 本规定所称闲置土地，是指具有下列情形之一的国有建设用地：

- (一) 超过动工开发日期满一年未动工开发的；
- (二) 超过动工开发日期满两年未完成项目总投资额百分之二十五的；
- (三) 已动工开发但开发建设用地面积占应动工开发建设用地总面积不足三分之一或者已投资额占总投资额不足百分之二十五，中止开发建设满一年的；
- (四) 以出让方式取得国有建设用地使用权，超过出让合同约定的竣工日期一年未竣工的；
- (五) 法律、法规规定的其他情形。

依法通过转让取得的国有建设用地使用权，具有前款规定情形之一的，可根据本规定处置。

前款第四项所称竣工是指建设项目依法取得《工程竣工报告》等法定竣工验收文件。

Several Provisions of Hainan Free Trade Port on Unused Land Management

(Adopted at the 31st Session of the Standing Committee of the 6th Hainan Provincial People's Congress on December 1, 2021)

Article 1 These Provisions are enacted to effectively manage unused land, make full use of such land and encourage economical and intensive land use pursuant to law, including the Hainan Free Trade Port Law of the People's Republic of China and Urban Real Estate Administration Law of the People's Republic of China, and based on actual circumstances in the Hainan Free Trade Port.

Article 2 Unused land as referred to in these Provisions means state-owned development land meeting any of the following conditions:

(a) no construction has taken place on the land for 1 year since the development commencement date;

(b) less than 25% of the total project investment has been invested into the project for 2 years since the development commencement date;

(c) development on the land has started but less than 1/3 of the total area to be developed has been built; or less than 25% of the total investment required has been invested and development has been suspended for 1 year;

(d) the state-owned leasehold estate is assigned, but the project is still incomplete for more than 1 year since the completion date agreed upon in the assignment contract; or

(e) other circumstances as provided by laws and regulations.

Unused land for which the state-owned leasehold estate has been obtained through assignment pursuant to law and meeting the conditions provided in this Article may be managed pursuant to these Provisions.

Completion as referred to in the fourth item of Paragraph 1 of this Article refers to the process where construction projects obtain statutory completion inspection documentation, such as the Project Completion Report.

第三条 县级以上人民政府组织和统筹本行政区域内闲置土地认定和处置工作。

省人民政府自然资源和规划主管部门对市、县、自治县人民政府自然资源和规划主管部门调查认定和处置闲置土地工作进行监督管理。市、县、自治县人民政府自然资源和规划部门负责本行政区域内闲置土地认定、处置以及土地闲置费核定等工作的组织实施。税务部门负责土地闲置费具体征收工作。市、县、自治县人民政府发展改革、住房和城乡建设等部门按照各自职责协同做好闲置土地认定和处置工作。

闲置土地所在地乡镇人民政府、街道办事处协助做好闲置土地认定和处置工作。

第四条 有下列情形之一的，可以认定为政府或者政府有关部门原因（以下统称政府原因）造成土地闲置：

（一）因未按照国有建设用地使用权有偿使用合同或者划拨决定书约定、规定的期限、条件将土地交付给国有建设用地使用权人，致使项目不具备动工开发条件的。但出让人和受让人已经签订交地确认文件、确认土地具备开发条件的不视为政府原因；

（二）因国土空间规划依法修改，造成国有建设用地使用权人不能按照国有建设用地使用权有偿使用合同约定或者划拨决定书规定的用途、规划和建设条件动工开发的；

（三）因国家和本省出台相关政策，需要对国有建设用地使用权有偿使用合同约定或者划拨决定书规定的规划和建设条件进行修改或者政策内容影响土地开发，导致无法动工开发的；

（四）因行政机关未依法实施涉及土地开发建设相关行政许可，导致无法动工开发的；

Article 3 The governments at or above the county level shall organize and coordinate the identification and management of the unused land within their administrative areas.

The provincial people's government natural resources and planning agencies shall be responsible for overseeing and managing natural resources and planning agencies under the people's governments in cities, counties, and autonomous counties in the identification and management of unused land. Natural resources and planning agencies under the people's governments in cities, counties, or autonomous counties shall be responsible for organizing the implementation of the identification and management of unused land and the determination of unused land fees within their administrative areas. The local tax authority shall be responsible for collecting unused land fees. The development and reform, housing, and urban-rural development agencies under the city, county, or autonomous county people's governments shall cooperate with and coordinate the identification and management of unused land based on their duties.

Town-level people's governments and subdistrict agencies where the unused land is located shall assist in the identification and management of the unused land.

Article 4 Any of the following circumstances is deemed that the land is unused due to the fault of the government or government agencies (hereinafter collectively referred to as "government fault"):

(a) the project is unable to meet the construction requirements for the state-owned leasehold estate due to the land not being delivered to the state-owned leasehold estate owner within the time limit or under the conditions provided and agreed upon in the state-owned leasehold estate lease contract or a government allocation decision. However, it shall not be deemed as a government fault if the assignor and assignee have signed a land transfer confirmation document and confirmed that the land meets development requirements;

(b) the state-owned leasehold estate owner fails to develop the land pursuant to the function, planning, and construction conditions provided in the state-owned leasehold estate lease contract or the government allocation decision due to changes in national land and space planning pursuant to law;

(c) the unused land cannot be developed due to changes in newly enacted national or Hainan provincial policies on state-owned leasehold estate lease contracts, government allocation decisions, or if such policies impact the development;

(d) the development cannot be started due to the failure of the administrative agencies to issue administrative permissions for land development and construction pursuant to law;

（五）因行政行为引起处置土地上相关群众信访事项等，导致无法动工开发的；

（六）因军事管制、文物保护等无法动工开发的；

（七）法律、法规规定的其他情形。

国有建设用地使用权人认为属于政府原因造成土地闲置的，应当向市、县、自治县人民政府自然资源和规划主管部门提供土地闲置原因说明材料，由市、县、自治县人民政府或者造成土地闲置的政府有关部门书面确认。

第五条 闲置土地按照下列方式处置，但因政府原因或者不可抗力等其他法定原因造成土地闲置的除外：

（一）超过出让合同约定的动工开发日期满一年未满两年不动工开发的，以及已动工开发但开发建设用地面积占应动工开发建设用地总面积不足三分之一或者已投资额占总投资额不足百分之二十五，中止开发建设满一年的，国有建设用地使用权人应当按土地出让金的百分之二十缴纳土地闲置费。

（二）超过动工开发日期满两年未完成项目总投资额百分之二十五的，无偿收回国有建设用地使用权。

（三）以出让方式取得国有建设用地使用权，超过出让合同约定的竣工日期一年未竣工的，应当在竣工前按照下列标准征收土地闲置费：

1. 超过出让合同约定的竣工日期一年未竣工，但未超过三年的，每年按土地现值百分之五征收。

2. 超过出让合同约定的竣工日期三年未竣工，但未超过五年的，每年按土地现值百分之十征收。

- (e) the development cannot be started due to complaints caused by administrative action;
- (f) the development cannot be started due to military controls or the protection of cultural relics; or
- (g) other circumstances provided by laws and regulations.

Any state-owned leasehold estate owner who believes that unused land is a result of government fault shall provide an explanation of the reasons for the unused land to the natural resources and planning agency at the city, county, or autonomous county people's government. The statement shall be verified in writing by the city, county, or autonomous county people's government or the agencies that caused the unused land.

Article 5 Except for unused land due to statutory reasons such as government fault or *force majeure*, the unused land shall be managed in the following ways:

(a) The state-owned leasehold estate owner must pay 20% of the land transfer fee as an unused land fee if no construction has taken place on the land for more than 1 year but less than 2 years since the development commencement date provided in the contract, or if development on the land has started but less than 1/3 of the total area to be developed has been built, or less than 25% of the total investment required has been invested and development has been suspended for 1 year.

(b) The state-owned leasehold estate shall be recovered without compensation if less than 25% of the total project investment has been invested into the project for 2 years since the development commencement date.

(c) Unused land fees shall be collected before the project completion date based on the following standards, if the state-owned leasehold estate is obtained through assignment but the project remains incomplete for 1 year of the completion date provided in the contract:

(i) 5% of the current value of the land shall be charged for every year the project remains incomplete if the project is incomplete for more than 1 year but less than 3 years since the Date;

(ii) 10% of the current value of the land shall be charged for every year if the project remains incomplete for more than 3 years but less than 5 years from the Date;

3. 超过出让合同约定的竣工日期五年未竣工，但未超过七年的，每年按土地现值百分之十五征收。

4. 超过出让合同约定的竣工日期七年未竣工的，每年按土地现值百分之二十征收。

同时符合第二条规定的两种及以上闲置土地情形的，从重适用前款规定的处置方式。

闲置土地现值应当以综合考虑土地原用途、土地资源条件、土地产值、土地区位、土地供求关系、人口以及经济社会发展水平等因素测算出的基准地价为依据。

第六条 因政府原因造成土地闲置的，市、县、自治县人民政府自然资源和规划主管部门应当与国有建设用地使用权人协商，选择下列方式处置：

（一）延长动工开发期限、竣工期限。对在一年内有条件消除政府原因，具备动工开发条件的闲置土地，可签订补充协议，重新约定动工开发、竣工期限和违约责任。从补充协议约定的动工开发日期起，延长动工开发期限最长不得超过一年。市、县、自治县人民政府应当自签订补充协议后一年内消除土地闲置的政府原因；

（二）调整土地用途、规划条件。因政府或者政府有关部门调整土地用途、规划条件造成土地闲置的，在符合国土空间规划的前提下，可以按照新用途或者新规划条件重新办理相关用地手续，并按照新用途或者新规划条件核算、收缴或者退还土地价款；

(iii) 15% of the current value of the land shall be charged for every year if the project remains incomplete for more than 5 years but less than 7 years since the Date; and

(iv) 20% of the current value of the land shall be charged for every year if the project remains incomplete for more than 7 years from the Date.

Unused land fees shall be charged based on the higher rate provided above if the unused land meets two or more of the circumstances provided in Article 2.

The current value of the unused land may be assessed based on the benchmark land price calculated by comprehensively considering original land use, land resources, land output value, land location, land supply and demand, population, and economic and social development.

Article 6 If the land is unused due to government fault, the natural resources and planning agency of the city, county or autonomous county people's government shall negotiate with the state-owned leasehold estate owner and choose any one of the following management methods:

(a) extension of the construction and completion periods. An amendment for the construction and completion periods, and liability for breach of contract may be signed for unused land suitable for the construction contract if the government fault can be eliminated within 1 year. The construction period shall be extended for a maximum of 1 year from the commencement date provided in the amendment. The city, county, and autonomous county people's governments shall eliminate all governmental fault on the unused land within 1 year of signing the amendment;

(b) adjustment of the land use and planning conditions. Applicable land use procedures may be redone pursuant to the new land use or planning conditions in compliance with national space planning if the unused land is a result of changes to land use or planning conditions by the government or appropriate government agencies. Land price may be calculated, collected, or refunded based on the new use or new planning conditions;

（三）安排临时使用。因政府原因造成项目尚不具备动工开发条件导致土地闲置的，在不具备动工开发条件期间，可以安排国有建设用地使用权人临时使用其闲置土地。从安排使用之日起，临时使用期限最长不得超过两年。市、县、自治县人民政府应当在安排临时使用期限内消除造成土地闲置的政府原因，使项目具备动工开发条件；

（四）置换土地。对已缴清土地价款、落实项目资金，但因国土空间规划依法修改造成土地闲置的，可以为国有建设用地使用权人置换其他价值相当的国有建设用地进行开发建设。涉及出让土地的，应当重新签订土地出让合同，并在合同中注明为置换土地；

（五）协议有偿收回国有建设用地使用权；

（六）法律、法规规定的其他处置方式。

按照前款第二项和第四项规定的方式处置，涉及商品住宅用地的，必须符合国家和我省房地产管理有关政策规定。

因不可抗力导致土地闲置的，依照本条规定的方式处置。

第七条 因生态环境保护、基础设施和公共服务项目建设、军事管制等公共利益需要导致土地无法开发利用，造成土地闲置的，经市、县、自治县人民政府批准，可以收回国有建设用地使用权，并按照有偿收回闲置土地补偿标准对国有建设用地使用权人给予适当补偿。有偿收回闲置土地补偿标准由省人民政府另行制定。

第八条 市、县、自治县人民政府自然资源和规划主管部门发现有涉嫌构成闲置土地的，应当向国有建设用地使用权人下发闲置土地调查通知书，经调查认定为闲置土地的，应当拟定闲置土地处置方案，报本级人民政府批准后，向国有建设用地使用权人下达征缴土地闲置费决定书

(c) grant of temporary use. State-owned development land owner may be granted temporary use of unused land if government fault leads to the project failing to meet construction requirements until such requirements are fulfilled. The maximum temporary use period shall not exceed 2 years from the date of the grant and the people's governments in the cities, counties, or autonomous counties shall eliminate the government fault that caused the unused land within the temporary use grant period to allow project construction to continue;

(d) land replacement. The state-owned leasehold estate owner may be granted another state-owned leasehold estate of equal value, provided that the land price was already paid and project funding is in place if the unused land is due to the change of national land space planning pursuant to law. The land assignment contract shall be re-signed and the contract shall specify it as replacement land if land assignment is involved;

(e) recovery of state-owned leasehold estate rights through agreement; or

(f) other management methods provided by laws and regulations.

If commercial residential land is involved pursuant to the second and fourth items of Paragraph 1 of this Article, the management shall be subject to the applicable national and Hainan Province property management policies and regulations.

Unused land resulting from *force majeure* may be managed pursuant to this Article.

Article 7 If the land cannot be developed due to the public interest, such as for ecological environment protection, the construction of infrastructure and public service facilities, or military controls, the state-owned leasehold estate rights may be recovered with the approval from the city, county, or autonomous county people's government, and state-owned development land owner shall be appropriately compensated in compliance with the compensation standards for recovering unused land. The standards shall be issued separately by the provincial people's government.

Article 8 If the competent natural resources and planning department under the city, county, or autonomous county people's government finds that a land plot might constitute unused land, the department shall issue an investigation notice to the state-owned development land owner. If the land is determined to be unused after investigation, the appropriate agency shall formulate a management plan for it and submit it to the people's government at the same level for approval, and issue a management decision, such as a decision document to pay unused land fees or to recover the state-owned development land leasehold estate from the owner after obtaining government approval. The state-owned development land owner shall be issued a written notice informing them that they are entitled to request a hearing pursuant to law before

或者收回国有建设用地使用权决定书等处置决定文书。作出处置决定文书前，应当书面告知国有建设用地使用权人依法享有申请听证的权利，国有建设用地使用权人要求举行听证的，应当依法组织听证。

征缴土地闲置费决定书应当同时抄送税务部门。

第九条 本规定第五条第一款第三项规定的土地闲置费按年计征和缴交。起征日为国有土地出让合同约定的竣工期限届满一年之次日，计征截止日为市、县、自治县人民政府自然资源和规划主管部门向国有建设用地使用权人送达《闲置土地调查通知书》之日。征期不足一年的部分，按照征缴标准和计征天数折算。

本规定施行前已出让的土地，已逾期未竣工或未逾期但距约定竣工日期不满两年，且自本规定施行之日起两年内未竣工的，自本规定施行满三年之次日按照本规定第五条第一款第三项规定开始征缴土地闲置费。

第十条 国有建设用地使用权人逾期不申请行政复议、不提起行政诉讼，也不履行相关义务的，市、县、自治县人民政府自然资源和规划主管部门、税务部门可以采取下列措施：

（一）逾期不办理国有建设用地使用权注销登记，不交回土地权利证书的，直接公告注销国有建设用地使用权登记和土地权利证书；

（二）逾期不缴纳土地闲置费或者不交回国有建设用地使用权的，申请人民法院强制执行。

第十一条 造成闲置土地政府原因的相关人民政府及相关部门应当依法履职，消除政府原因。省人民政府和有关部门可采取扣减新增建设用地计划指标、暂停农转用审批等措施，对市、县、自治县人民政府闲置土地处置工作实施考核和奖惩。

the management decision is made. A hearing shall be organized pursuant to law if the state-owned development land owner requests a hearing.

A copy of the written decision on collecting the unused land fees shall also be sent to the tax authority.

Article 9 Unused land fees shall be calculated and collected annually if collected and paid pursuant to the third item of Paragraph 1 of Article 5. The commencement date to collect the fees shall be the second day of the end of the first year after the completion date specified in the state-owned leasehold estate assignment contract. The due date for the calculation and collection of unused land fees shall be the date on which the competent city, county, or autonomous county people's government natural resources and planning agency issues the Notice on Unused Land Investigation to the state-owned development land owner. If the collection period is less than 1 year, the fees due shall be calculated based on the collection standards and collection days.

If land assigned before the implementation of these Provisions remains incomplete or the land development period has not expired but has less than 2 years left and the development is not completed within 2 years of the date these Provisions came into force, the commencement date to collect shall be the second day of the end of the third year of the effectiveness of these Provisions and unused land fees shall be collected and paid in accordance with the third item of Paragraph 1 of Article 5.

Article 10 If the state-owned leasehold estate owner fails to request an administrative review, file an administrative lawsuit, or fulfill its obligations within the time limit, the competent natural resources and planning agency and taxation agencies of the city, county, and autonomous county people's government may take the following actions:

(a) the appropriate agencies may directly publish the deregistration of the state-owned leasehold estate registration and land title certificate, if the state-owned leasehold estate owner does not complete deregistration and does not return the land title certificate; and

(b) petition the people's court for enforcement if the state-owned leasehold estate owner does not pay the unused land fees owed or does not return the right to use the development land.

Article 11 Where the land is unused due to governmental fault, the appropriate people's governments and agencies shall perform their duties and eliminate such fault pursuant to law. The provincial people's government and appropriate agencies may take action such as reducing the expansion index of planned new development land, suspending review and approval for converting agricultural land to development land, and conducting assessments and issuing rewards and penalties to the city, county, or autonomous county people's government related to work managing unused land.

第十二条 县级以上人民政府应当通过依法调整规划、改变土地用途等措施，鼓励和引导闲置土地盘活利用。

第十三条 县级以上人民政府及其有关部门工作人员违反本规定，有下列情形之一的，依法给予处分；对当事人造成损失的，应当依法承担赔偿责任；构成犯罪的，依法追究刑事责任：

（一）违反本规定不如实核定和征缴土地闲置费的；

（二）擅自决定减缴、免缴、缓缴土地闲置费的；

（三）坐支、截留或挪用土地闲置费的；

（四）不依法履行闲置土地监督检查职责的；

（五）未依法履职造成土地闲置或者故意长期拖延未消除导致土地闲置的政府原因的；

（六）其他在闲置土地调查、认定和处置工作中徇私舞弊、滥用职权、玩忽职守的。

第十四条 闲置土地的认定和处置，本规定未作规定的，适用国家和本省的有关规定。

第十五条 本规定自 2022 年 1 月 1 日起施行。

Article 12 The people's government at or above the county level shall encourage and guide the revitalization and utilization of unused land through methods such as adjusting planning and changing land use pursuant to law.

Article 13 If any employee of the people's government at or above the county level or its agencies violates these Provisions and such violation falls under any of the following circumstances, the employee shall be penalized pursuant to law. Any employee of the above agencies that causes losses to a party shall be liable for indemnification pursuant to law and shall be held criminally liable pursuant to law if it constitutes a crime:

- (a) failure to truthfully confirm and collect unused land fees in violation of these Provisions;
- (b) unauthorized approval of reductions, exemptions or deferment of unused land fees;
- (c) spending, keeping, or misappropriating unused land fees;
- (d) failure to perform unused land oversight and inspection duties pursuant to law;
- (e) failure to perform duties in accordance with the law, thus resulting in unused land, or deliberate long-term delays and failure to eliminate the governmental fault causing unused land; or
- (f) other misconduct for playing favoritism and committing irregularities, abuse of position, or dereliction of duty in the investigation, determination, or disposal of unused land.

Article 14 Other provisions of the state and the Hainan Province shall apply if these Provisions do not provide for the determination and management of the unused land.

Article 15 These Provisions shall come into force as of January 1, 2022.

