

Date of Hearing: April 14, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1271 (Ting) – As Amended April 6, 2021

SUBJECT: Surplus land.

SUMMARY: Expands the types of land exempt from the Surplus Lands Act (SLA), imposes new procedural requirements on local agencies disposing of surplus land (disposing agencies), and makes various technical changes to the SLA. Specifically, **this bill:**

- 1) Expands the list of land that is exempt from the requirements of the SLA to include former military base and other planned residential or mixed-use developments larger than five total acres that are subject to a written plan if one of the land owners is a local agency and the development meets all of the following criteria:
 - a) The development will include not less than 1200 housing units;
 - b) The development will require that at least 25 percent of every 200 residential units constructed is affordable to lower income households (affordable units), as defined; and,
 - c) Where nonresidential development is included in the development, at least 25 percent of the total planned affordable units are made available for occupancy for every 25 percent of nonresidential development made available for occupancy.
- 2) Requires the Department of Housing and Community Development (HCD) to post PDF links to copies of the written notices of availability of surplus land received from local agencies.
- 3) Expands the requirements for disposing agencies to enter into good faith negotiations with public entities and housing sponsors, as defined, as follows:
 - a) Requires disposing agencies that, pursuant to the requirements of the SLA, engaged in good faith negotiations but did not reach a mutually satisfactory price or terms with a public entity or housing sponsor seeking to purchase or lease the land to comply with the following if the disposing agency subsequently secures an offer from another party interested in the land:
 - i) Provide the original entity that engaged in negotiations with the disposing agency 30 days to match or exceed the price offered to the disposing agency by the secondary party;
 - ii) Enter into a second period of good faith negotiations with the original entity if the original entity agrees to match the price offered by the secondary party; and,
 - iii) Provide evidence to HCD that the any negotiations required by the SLA were conducted in good faith.
- 4) Makes technical and clarifying changes to the SLA.

EXISTING LAW:

- 1) Requires each local agency, on or before December 31 of each year, to make an inventory of all lands held, owned or controlled by it or any of its departments, agencies, or authorities, to determine what land, if any, is in excess of its foreseeable needs. Requires a description of each parcel found to be in excess of needs to be made a matter of public record and requires the agency to report this information to HCD no later than April 1 beginning in 2021.
- 2) Defines “surplus land” as land owned by any local agency that is determined to be no longer necessary for the agency’s use.
- 3) Exempts certain types of land owned by local agencies from the requirements of the SLA.
- 4) Requires a local agency that is disposing of surplus land to notify certain public entities and housing sponsors that surplus land is available for one of the following purposes:
 - a) Low- and moderate-income housing;
 - b) Park and recreation, and open space;
 - c) School facilities; or,
 - d) Infill opportunity zones or transit village plans.
- 5) Requires that if another agency or housing sponsor wants to buy or lease the surplus land for one of these purposes, it must inform the disposing agency of its interest within 60 days, and if multiple entities want to purchase the land, the housing sponsor that proposes to provide the greatest level of affordable housing gets priority. The disposing agency and the entity have an additional 90 days to negotiate a mutually satisfactory price and terms in good faith. If they can’t agree, the agency that owns the surplus land can dispose of the land on the private market
- 6) Requires a local agency, prior to agreeing to the terms for the disposition of surplus land, to provide specified information about its disposition process to HCD. Requires HCD to submit to the local agency, within 30 days, written findings of any process violations that have occurred. The law provides a local agency at least 30 days to either correct the violations or adopt a resolution with findings explaining why the process is not in violation.
- 7) Provides that a local agency that disposes of land in violation of the SLA following a notification from HCD is liable for a penalty of 30 percent of the final sale price for a first violation and 50 percent for subsequent violations. Requires that penalty assessments shall be deposited into a local housing trust fund, the state Building Homes and Jobs Fund, or the Housing Rehabilitation Loan Fund, as specified.

FISCAL EFFECT: This bill is keyed fiscal and contains a state mandated local program.

COMMENTS:

- 1) **Bill Summary.** This bill makes numerous changes to the SLA as it applies to local agencies. Specifically this bill makes the following changes:
 - a) Expands the definition of “exempt surplus land” to include former military base land that is larger than five acres, is subject to a written plan, includes more than 1200 units of housing, and ensures that 25 percent of the residential units will be affordable units that are built concurrently with other developments on the site;
 - b) Requires disposing agencies that receive a secondary offer to purchase a parcel after a public entity or housing sponsor failed to reach a mutually satisfactory price with the disposing agency, to provide the original entity 30 days to match or exceed the secondary offer. If the original entity matches the offer price the disposing agency must begin a second 90-day period of good faith negotiations with the original entity;
 - c) Requires any disposing agencies to provide evidence to HCD that negotiations required by the SLA were conducted in good faith; and,
 - d) Makes various technical changes to the SLA.

This bill is cosponsored by the Public Interest Law Project (PILP), Non-profit Housing Association of Northern California (NPH), and East Bay Housing Organizations (EBHO).

- 2) **Author’s Statement.** According to the author, “California is facing an affordable housing crisis and unused public land has the potential to promote affordable housing development throughout the state. AB 1271 clarifies and strengthens provisions in the Surplus Land Act that will promote the use of public land for affordable housing projects.”
- 3) **Prior and Related Legislation.** AB 1486 (Ting), Chapter 664, Statutes of 2019, expanded the scope of local agencies subject to the SLA, revised the definitions of “surplus land” and “exempt surplus land,” revised the noticing requirements relative to local agencies, housing sponsors and HCD, and added penalties for local agencies that sell land in violation of the SLA.

AB 2135 (Ting), Chapter 644, Statutes of 2014, amended the procedure for the disposal of surplus land by local agencies and expanded the provisions relating to the prioritization of affordable housing development if the surplus land will be used for residential development.

SB 719 (Min) provides that land comprising the former Tustin Marine Corps Air Station is exempt surplus land for the purposes of the SLA if certain affordability standards for residential developments and other conditions are met. This bill was heard in the Senate Governance and Finance Committee on April 8, 2021 and was approved 5-0.

- 4) **Base Realignment and Closure (BRAC)** The end of the Cold War forced the Department of Defense to adjust to new geopolitical realities. Through several rounds of the BRAC process, federal officials closed or realigned nearly three dozen military bases in California. Upon their closure, the Department of Defense, along with local agencies, designated local reuse authorities to guide the future use of the base. This process resulted in the relinquishment of significant tracts of federal land to local agencies. For example, following the closure of the

Tustin Marine Corps Air Station, the City of Tustin adopted a redevelopment plan for 1,600 acres of land associated with the former military installation. The cities of Alameda and Concord are also managing the disposal and redevelopment of significant acreage of former military installations.

The recent amendments to the SLA that prohibit disposing agencies from entering into negotiations to sell surplus land prior to offering that land to housing sponsors impact these large swaths of land that local agencies have adopted major redevelopment plans for. While the SLA is designed to manage the disposal of individual parcels, applying the SLA's provisions to the multitude of parcels local agencies are seeking to redevelop according to specific plans that are subject to federal conditions may frustrate and stall the redevelopment of these sites.

5) **Policy Considerations.** The Committee may wish to consider the following:

- a) **BRAC.** In order to address the complexities the SLA imposes on massive land redevelopments associated with former military installations, this bill proposes to exempt this land by expanding the definition of "exempt surplus land" to include adjacent or nonadjacent parcels larger than five total acres that are located on former military sites. However, in order for the land to qualify for the exemption, the bill requires the development to include at least 1200 units of housing and requires that at least 25 percent of the units will be affordable units. Additionally the affordable units must be constructed concurrently with market rate units and any commercial developments on the site.

The affordability levels required to exempt former military land as proposed in this bill are consistent with the levels required for other qualifying land exemptions from the SLA. However, under the SLA, if a local agency does not secure an agreement with a public entity or housing sponsor, they may proceed to sell the land on the open market with a deed restriction that only requires 15 percent of developed units to be affordable units. Additionally there is pending legislation in the Senate SB 719 (Min) which would, among other provisions, exempt land associated with the Tustin Marine Corps Air Station from the SLA if housing developed on the land is either:

- i) At least 20 percent of the residential units are restricted to persons and families of low or moderate income, as defined; or,
- ii) At least 15 percent of the residential units are restricted to lower income households and 10 percent of those units are available to very low income households, as defined.

The author and sponsors of the bill may wish to coordinate their efforts with other measures amending the SLA to avoid conflict and duplication. The Committee may wish to consider if the affordability requirements and conditions this bill places on former military land strikes the right balance between affordability and flexibility for local agencies seeking to manage large and numerous parcels associated with former military bases.

- b) **Negotiation Timing.** Existing law requires disposing agencies to enter into 90 days of good faith negotiations with public entities and housing sponsors that express an interest in acquiring land the agency is disposing. If the parties are unable to come to a mutually satisfactory price and terms, the disposing agency may proceed to dispose of the land

without further regard to the SLA except that the land must be deed-restricted so that if any housing is eventually developed, it must include a specified portion of affordable units.

This bill would add a new requirement specifying that when a disposing agency receives an offer from any another party after good faith negotiations with a public entity or housing sponsor failed to produce an agreement, the disposing agency must reveal the price of the secondary offer to the original negotiating entity, and must provide them 30 days to match the price. If the original entity agrees to match the price, the disposing agency must reenter a 90-day negotiation period with the original entity and presumably walk away from the potential secondary offer.

This provision provides public entities and housing sponsors that are already prioritized under the SLA significant influence over a disposing agency's ability to sell a parcel of land that is subject to the SLA. The extended time periods created by this new requirement may make it difficult for a disposing agency to attract offers from any party that is not prioritized in the SLA. The Committee may wish to consider if this provision may artificially deflate the value of surplus land frustrating the ability of disposing agencies to secure a reasonable price for the land.

- c) **“Evidence” of good faith.** Under the SLA, prior to agreeing to terms for the disposition of surplus land, disposing agencies are required to provide HCD a description of the notices of availability required by this article, a description of the negotiations conducted with any responding entities, and a copy of any restrictions recorded against the property as required by the SLA. If within 30 days of receiving this information HCD notifies the disposing agency that the planned disposal would constitute a violation of the SLA, the disposing agency could be subject to penalties if it proceeds with the disposition. As currently constructed in statute, the items required are essentially objective standards that can be documented (e.g. copies of a notice, description of meeting dates, and evidence of a deed restriction). This bill would insert subjectivity into a process currently limited to objective criteria by requiring local agencies to submit evidence that they negotiated in good faith.

AB 1486 (Ting), Chapter 664, Statutes of 2019, required HCD to adopt guidelines to implement the SLA. The final guidelines were adopted in April of 2021. Under the recently adopted guidelines entities that believe a local agency is not negotiating in good faith may notify HCD. The Committee may wish to consider if it is premature to require disposing agencies to provide evidence that they are acting in good faith when there has been less than two weeks for accusations of bad faith to be submitted to HCD under the new guidelines.

- 6) **Committee Amendments.** In order to address some of the policy considerations noted above, the Committee may wish to consider the following amendments:
 - a) Strike the proposed requirements in Section 54223 of the Government Code which would require local agencies to enter into a second round of good faith negotiations if the original responding entity agrees to match the price of a secondary offer; and,

b) Strike the proposed requirements in Section 54230.5 (b)(1) of the Government Code which would require local agencies to submit evidence that negotiations were conducted in good faith to HCD.

- 7) **Arguments in Support.** NPH writes in support, “Across California, public agencies control significant amounts of unused land that have remained dormant for decades, but are strategically located next to transit, schools, and job opportunities. California’s surplus land laws already require such land to be prioritized for purposes of affordable housing, but some lack of clarity within the law prevents surplus land from being used more effectively.

Enacted in 1968, the Surplus Land Act requires all local agencies to prioritize affordable housing, as well as parks and open space, when disposing of surplus land. Before local agencies may dispose of surplus land, they are required to give notice to local public entities and organizations involved in affordable housing development. If a preferred entity expresses interest, the parties must enter into good faith negotiations to determine a sales price or lease terms. While changes to the SLA made by AB 1486 helped clarify the Act, local agencies have attempted to circumvent this statute. These conflicts have delayed the sale of surplus sites and stunted affordable housing development.”

- 8) **Arguments in Opposition.** The City of Tustin writes in opposition, “AB 1271 requires 25 percent affordability at a former military base, comprised of very low and low income only. The City has performed a financial analysis, which has been independently verified, that shows going from 15 percent to 25 percent total affordability results in a 50 percent loss in land sale revenue – revenue which is used to finance the extensive infrastructure requirements (estimated at \$650 million) needed to support development as well as the public amenities being installed by the City. The affordability percentages within SB 719 have been vetted by the City to understand the financial implications which the City believes can work. AB 1271 includes an arbitrary affordability number with no financial analysis accompanying it.

Additionally, the current SLA does not require more than a minimum 15 percent affordability. As drafted, AB 1271 treats Tustin Legacy and other former military bases differently and holds them to a different standard than any other publicly-owned parcel to be disposed of by a public agency. Under the 15 percent SLA minimum requirement, the land value is already being discounted, and an increase to 25 percent (and the associated 50 percent revenue loss) results in removing the City’s financial ability to fund infrastructure and impacts the City’s ability to move any housing forward at the base. The revenue loss associated with a 25 percent mandate can put the City’s overall fiscal health at risk and will further delay development at Tustin Legacy.”

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

REGISTERED SUPPORT / OPPOSITION:

Support

Public Interest Law Project [SPONSOR]

Non-profit Housing Association of Northern California [SPONSOR]

East Bay Housing Organizations [SPONSOR]

California Coalition for Rural Housing
Generation Housing
Midpen Housing Corporation
Public Advocates INC.
San Diego Housing Federation
San Francisco Bay Area Planning and Urban Research Association (SPUR)

Oppose Unless Amended

Association of California Healthcare Districts
California Association of Sanitation Agencies
City of Tustin
California State Association of Counties (CSAC)
League of California Cities
Rural County Representatives of California (RCRC)
Urban Counties of California

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