

Date of Hearing: April 20, 2022

**ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT**

Cecilia Aguiar-Curry, Chair

AB 2319 (Mia Bonta) – As Introduced February 16, 2022

**SUBJECT:** Surplus land: former military base land.

**SUMMARY:** Creates an exemption from the Surplus Lands Act (SLA) for the Alameda Naval Air Station (Alameda Point). Specifically, **this bill:**

- 1) Adds to the SLA’s definition of “exempt surplus land” surplus land that is a former military base that was conveyed by the federal government to a local agency, and is subject to existing law governing the redevelopment of Alameda Point and the Fleet Industrial Supply Center, as specified, provided that all of the following conditions are met:
  - a) The former military base has an aggregate area greater than five acres, is expected to include a mix of residential and nonresidential uses, and is expected to include no fewer than 1,400 residential units upon completion of development or redevelopment of the former military base.
  - b) Development of housing affordable to low- and moderate-income households is governed by a settlement agreement entered into prior to September 1, 2020.
  - c) Prior to disposition of the surplus land, the agency adopts an initial finding of exemption, as specified.
  - d) The agency includes in its annual report to the Department of Housing and Community Development (HCD) on its general plan the status of development of residential units on the former military base, including the total number of residential units that have been permitted and what percentage of those residential units are restricted for persons and families of low or moderate income, as specified.
- 2) Provides that, if the agency’s annual report filed every fifth year shows that the agency is not in compliance with the settlement agreement, the local agency shall adopt findings stating why the local agency was unable to meet the requirements of the settlement agreement and a plan to come into compliance with the settlement agreement within five years. Failure to comply with any portion of such a plan shall be a violation of the SLA.
- 3) Provides that a violation of this bill is subject to penalties for violations of the SLA.
- 4) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution due to contracts between the City of Alameda and the United States government for the conveyance of the Alameda Point property.

**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 surplus 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 specified purposes.
- 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.
- 8) Provides for the redevelopment of Alameda Point pursuant to the Health and Safety Code.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Local Surplus Lands.** The SLA spells out the steps local agencies must follow when they dispose of land they no longer need. Before local officials can dispose of property, they must declare that the land is no longer necessary for the agency’s use in a public meeting and declare the land either “surplus land” or “exempt surplus land.” The SLA designates certain types of land as “exempt surplus land,” which is not subject to the requirements of the SLA. All other surplus land must follow the procedures laid out in the SLA.

After a local agency declares that a piece of land is surplus to its needs (and is not exempt), the agency must send a written notice of availability to various public agencies and nonprofit groups, referred to as “housing sponsors,” notifying them that land is available for any of the following purposes:

- a) Low- and moderate-income housing.
- b) Park and recreation, and open space.
- c) School facilities.
- d) Infill opportunity zones or transit village plans.

If another agency or housing sponsor wants to purchase or lease the surplus land for one of these purposes, it must tell the disposing agency within 60 days. Except where the surplus land is currently used for park or recreational purposes, the local agency must give priority to the housing sponsor that proposes to provide the greatest level of affordable housing on the land. If the surplus land is currently used for park or recreational purposes, the disposing agency must give first priority to an entity that agrees to continue to use the site for park or recreational purposes.

If the local agency and any of the prioritized entities are not able to negotiate a mutually satisfactory price after 90 days of good faith negotiations, the local agency may proceed to sell the land on the open market.

The SLA guidelines adopted by HCD include local agency leases of surplus land as a type of disposition of land subject to the SLA. Local agencies that dispose of surplus land in violation of the SLA are subject to penalties indexed to the final sales price of the land.

- 2) **Exemptions from the SLA.** The SLA exempts a series of potential land dispositions from its requirements. Exempt dispositions are not required to go through the solicitation and negotiation process outlined in the SLA. This reflects the reality that certain dispositions provide intrinsic value to residents, are necessary for an agency's use, will provide one of the desired outcomes (provision of affordable housing, or preservation of park lands) envisioned in the SLA, or that the land that is being disposed of is incompatible with housing.

For example, surplus land that will be developed with a large mixed-use development that dedicates at least 25 percent of the units to lower income households is considered "exempt surplus land" as the affordability levels provided are equivalent to the minimum requirements of the SLA. This exemption allows local agencies to more expeditiously dispose of land while achieving the same desired outcome of the SLA.

- 3) **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.

Alameda Point is among the nearly 30 military bases in California closed by the federal government at the end of the Cold War. The Legislature passed special legislation to help Alameda officials redevelop these properties to civilian uses (Health and Safety Code Section 33492.125 et seq., added by AB 3129, Lee, 1996, and renumbered by SB 320, Senate Housing and Land Use Committee, 1997). Alameda officials adopted their redevelopment plan on March 2, 1998.

- 4) **Settlement Agreement.** In the Spring of 2000, an action commenced in Alameda Superior Court (*Renewed Hope Housing Advocates and Arc Ecology v. City of Alameda, et al.*) challenging the Environmental Impact Report for the reuse of Alameda Point. The parties eventually settled in March of 2001 on multiple matters, including the construction of affordable housing on the base. The agreement stipulated:

“25% of all newly constructed housing units at Alameda Point shall be made permanently affordable as follows: 10% of all newly constructed housing units shall be made permanently affordable to households with incomes at or below 80% of median income; and the remaining 15% of newly constructed housing units to made affordable shall be made affordable under the criteria set forth in California Health & Safety Code section 33413(b)(2), as it may be amended, or in any successor section.”

This requirement applies to each residential development project at Alameda Point, and the City of Alameda is prohibited from approving any residential development projects on the base that do not comply. According to the sponsor, this requirement presently provides affordability rates of 6% very-low, 10% low-, and 9% moderate-income housing.

- 5) **Conflict Between the SLA and Redeveloping BRAC Properties.** In 2019, the Legislature substantially revised the SLA to increase the emphasis on affordable housing and address concerns that some local agencies were bypassing the Act’s requirements (AB 1486, Ting). Among other changes, AB 1486 broadened the definition of surplus land and required land to be designated as surplus before the local agency sells it. AB 1486 prohibited local agencies from counting the sale of land for economic development purposes as being “for the agency’s use.” This means that local agencies must open their properties to affordable housing developers first, even if they have a different purpose for the property.

AB 1486 also required that, if a surplus property is not sold to a housing sponsor but housing is developed on it later, 15% of the units be sold or rented at an affordable cost to lower income households. Finally, AB 1486 imposed penalties on local agencies that violate the SLA, totaling 30% of the sales price of land disposed of in violation of the SLA for a first violation and 50% of the price of the land for subsequent violations.

These recent amendments to the SLA have come into conflict with local agencies’ plans and obligations to redevelop former military bases. Two bills have attempted to address this issue, one more broadly and one for an individual base:

- a) **AB 1271 (Ting) of 2021.** This bill would have expanded the types of land exempt from the SLA to include former military bases or other planned residential or mixed-use developments of adjacent or nonadjacent parcels larger than five acres. The bill required these properties to be subject to a written plan, and at least one of the owners must be a local agency. Developments on these properties would have been limited to the following criteria:
- i) The development will include not less than 1200 housing units;
  - ii) 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,

- iii) 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.

AB 1271 was held in the Housing and Community Development Committee.

- b) **SB 719 (Min) of 2021.** This bill creates an exemption to the SLA for Tustin Marine Corps Air Station (Tustin MCAS), if the land is included in the redevelopment plan for the Tustin MCAS, is a former military base granted to a local agency by the federal government, and is subject to an agreement between federal and local governments. SB 719 requires the land to meet both of the following requirements for affordable housing: at least 20% of the residential units permitted after January 1, 2022, are restricted to persons and families of low or moderate income; and, and at least 15% of those units are restricted to lower income households, as defined.

SB 719 requires the disposal of Tustin MCAS land to be subject to the following:

- i) The local agency must first adopt an initial finding of exemption.
- ii) If, on January 1, 2027, and every five years thereafter, at least 20 percent of the total number of residential housing units permitted are not restricted to persons and families of low and moderate income or at least 15 percent of the total number of residential housing units are not restricted to lower income households, the local agency must adopt a finding stating the reasons that the local agency was unable to meet the required percentages and a plan to come into compliance with the bill.
- iii) If, within five years of adopting the above plan, the local agency has not permitted the requisite percentage of residential housing units restricted to persons and families of low and moderate income or lower income households, it must comply with the SLA for disposal of future parcels until it reaches the required percentages.
- iv) The local agency must include in its annual report to the HCD on its general plan the status of the development of units on the land, including the total number of residential units that have been permitted and the percentage of those residential units that are restricted for persons and families of low and moderate income or lower income households.

SB 719 is pending in this committee.

- 6) **Conflict Between the SLA and Redeveloping Alameda Point.** According to the City of Alameda, pursuant to the recent changes to the SLA, the City is obligated to make the former military base available to various entities for possible development of housing, open space, etc. This obligation conflicts with the federally-approved reuse plan and the prior agreement the City had entered into with the Navy to redevelop Alameda Point. In addition, the inclusion of leases in the SLA has impacted the City's ability to lease vacated military buildings for interim uses, an essential component of the reuse plan as well as the City's economic revitalization plan to offset the loss of jobs and tax revenue from the closure of Alameda Point. The interim lease of vacant buildings for economic revitalization helps finance ongoing cleanup and development over the lifetime of the Alameda Point project.

In addition, according to their letter of support for this bill, “The Alameda Point Collaborative (APC), in partnership with Building Futures with Women and Children (BFWC) and Operation Dignity (OD), controls 36 acres of land at the former Naval Air Station...through a 55-year Legally Binding Agreement. APC was granted this property through the Federal McKinney Vento Act which makes land at former military installations available to organizations providing housing and other services to homeless individuals and families through (BRAC).” These organizations provide housing at Alameda Point to 200 households totaling more than 500 people, half of whom are children. APC also provides residents job training and other support services. APC is working with the City, a market-rate developer, and MidPen Housing on a project that will replace dilapidated units now housing homeless people and build an additional 112 units for the homeless. This project has been delayed due to the recent changes to the SLA.

- 7) **Author’s Statement.** According to the author, “AB 2319 will expedite the construction of low-, very low- and moderate-income housing at Alameda Naval Air Station (Alameda Point). These critical projects have been dramatically slowed due to the state’s interpretation of how the Surplus Land Act should apply to the project. The construction of low-, very low- and moderate-income units at this former Naval base is particularly beneficial to this community.

“There is an existing settlement agreement between the City of Alameda and a local nonprofit, Renewed Hope, requiring 25% of all housing units at the former Naval base to be low-, very low- or moderate-income housing, which is higher than the 15% inclusionary zoning requirement in the remainder of the City of Alameda. Due to the unique circumstance the City of Alameda finds itself, AB 2319 is narrowly tailored to just apply to the former Naval base in Alameda.”

- 8) **Bill Summary.** This bill creates an exemption to the SLA for Alameda Point, subject to several conditions:
- a) The former military base has an aggregate area greater than five acres, is expected to include a mix of residential and nonresidential uses, and is expected to include at least 1,400 residential units when the redevelopment is complete.
  - b) Development of housing affordable to low- and moderate-income households is governed by the settlement agreement discussed in 4), above.
  - c) The City of Alameda adopts an initial finding of exemption before disposing of the surplus land.
  - d) The City of Alameda includes in its annual report to HCD on its general plan the status of development of residential units on Alameda Point, including the total number of residential units that have been permitted and what percentage of those residential units are restricted for persons and families of low or moderate income.

If the City of Alameda’s annual report filed every fifth year shows that the City is not in compliance with the settlement agreement, the City must adopt findings stating why it was unable to meet the requirements of the settlement agreement and adopt a plan to come into compliance with the settlement agreement within five years. Failure to comply with any

portion of the plan is a violation of the SLA. In addition, a violation of this bill as a whole is subject to existing penalties in the SLA.

This bill is sponsored by the City of Alameda.

- 9) **Policy Consideration and Committee Amendment.** The Committee may wish to consider the following:

According to the provisions of this bill, if the City of Alameda's annual report *filed every fifth year* shows that the City is not in compliance with the settlement agreement, the City must adopt findings stating why it was unable to meet the requirements of the agreement and adopt a plan to come into compliance *within five years*. Concerns have been raised that this language could be misinterpreted to allow the City to be out of compliance with the settlement agreement for a lengthy period of time. The Committee may wish to strike this language from the bill and encourage the author to continue refining compliance language moving forward.

- 10) **Related Legislation.** AB 1784 (Seyarto) exempts low density parcels located in jurisdictions that meet or exceed their 6th cycle Regional Housing Needs Allocation production targets for Very Low Income and Low Income housing on an annual basis from the SLA. AB 1784 is pending in this Committee.

AB 2357 (Ting) changes the penalty provisions of the SLA and makes procedural changes to noticing provisions that apply to "surplus land" and "exempt surplus land" disposed of by local agencies subject to the SLA. AB 2357 is pending in this Committee.

SB 719 (Min) provides that land comprising the former Tustin MCAS is exempt surplus land for the purposes of the SLA if certain affordability standards for residential developments and other conditions are met. SB 719 is pending in this Committee

- 11) **Previous Legislation.** AB 1271 (Ting) of 2021 would have expanded the types of land exempt from the SLA, imposed new procedural requirements on local agencies disposing of surplus land, and would make various technical changes to the SLA. This bill was held in the Assembly Housing and Community Development Committee.

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

- 12) **Arguments in Support.** The City of Alameda, sponsor of this measure, writes, "As a condition of the City's acquisition of the former military base in the mid-1990s, the City adopted a base reuse plan that provides for the development of the base, including housing and economic development. Implementation of the base reuse plan mitigates the impacts of the base closure on the local community. The base reuse plan was approved by the federal government and is incorporated into the contractual conveyance agreement between the

military and the City. Implementation of the base reuse plan was a requirement placed on the City in the conveyance agreement and a condition that remains on the property.

“In 2019, AB 1486 (Ting) was enacted and amended the Surplus Lands Act (SLA), placing additional requirements upon cities prior to disposing of ‘surplus lands.’ Unfortunately, an unintended consequence of those changes to the SLA is that property located on former military bases, though already subject to a base reuse plan and obtained by the City pursuant to a federal surplus property process, must be made available to various other entities pursuant to a prescribed SLA process prior to being available for the development intended under the base reuse plan. This is in direct conflict with the federally approved base reuse plan and agreement that the City entered with the Navy. These changes to the SLA have meant that the City has been required to pause the long awaited and necessary implementation of the base reuse plan which has also stalled the needed housing, economic development, and jobs that it will bring to the City.

“AB 2319 recognizes that this is an unintended consequence of AB 1486 and creates a narrow exemption to the SLA for the former naval base within the City if certain conditions are met. These conditions include that there is a minimum of 1,400 residential units and the housing will include affordable housing for very low, low-and moderate-income households in accordance with the terms of the Settlement Agreement governing the development of housing on the former base. The City of Alameda supports legislation that supports the efficient redevelopment and leasing of property at former military bases consistent with approved base reuse plans and that ensures that affordable housing goals will be met.”

13) **Arguments in Opposition.** None on file.

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

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

City of Alameda [SPONSOR]  
Alameda Point Collaborative  
Building Futures with Women and Children  
Operation Dignity

##### **Opposition**

None on file

**Analysis Prepared by:** Angela Mapp / L. GOV. / (916) 319-3958