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**AB-2319 Surplus land: former military base land.** (2021-2022)

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**Assembly Bill No. 2319**

**CHAPTER 963**

An act to amend Section 54221 of the Government Code, relating to surplus land.

[ Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2319, Mia Bonta. Surplus land: former military base land.

Existing law prescribes requirements for the disposal of surplus land by a local agency. Existing law defines "surplus land" for these purposes to mean land owned in fee simple by any local agency for which the local agency's governing body takes formal action declaring that the land is surplus and is not necessary for the agency's use. Existing law provides that an agency is not required to follow the requirements for disposal of surplus land for "exempt surplus land" except as provided. Existing law categorizes as "exempt surplus land" surplus land that a local agency is transferring to another local, state, or federal agency for the agency's use.

This bill would add to the definition of "exempt surplus land," land that is a former military base conveyed by the federal government to a local agency, is subject to certain provisions governing the Alameda Naval Air Station and the Fleet Industrial Supply Center, and meets other specified conditions. These conditions would include, among others, that the former military base has an aggregate area greater than 5 acres, is expected to include a mix of residential and nonresidential uses, is expected to include no fewer than 1,400 residential units upon completion of development or redevelopment of the former military base, the affordability requirements for residential units are required to be governed by a settlement agreement entered into prior to September 1, 2020, and that prior to the disposition of the surplus land, the recipient has negotiated a project labor agreement, as specified. The bill would impose a penalty of 30% of the final sale price of the land upon a local agency that disposes of land in violation of these provisions after receiving notification thereof from the Department of Housing and Community Development, and a 50% penalty for subsequent violations, subject to an opportunity to cure or correct an alleged violation. The bill would require a penalty assessed pursuant to these provisions to be deposited into a local housing trust fund or, in certain circumstances, the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund, as provided. The bill would make the expenditure of penalty moneys deposited into the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund pursuant to these provisions subject to appropriation by the Legislature.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Alameda.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 54221 of the Government Code is amended to read:

**54221.** As used in this article, the following definitions shall apply:

(a) (1) "Local agency" means every city, whether organized under general law or by charter, county, city and county, district, including school, sewer, water, utility, and local and regional park districts of any kind or class, joint powers authority, successor agency to a former redevelopment agency, housing authority, or other political subdivision of this state and any instrumentality thereof that is empowered to acquire and hold real property.

(2) The Legislature finds and declares that the term "district" as used in this article includes all districts within the state, including, but not limited to, all special districts, sewer, water, utility, and local and regional park districts, and any other political subdivision of this state that is a district, and therefore the changes in paragraph (1) made by the act adding this paragraph that specify that the provisions of this article apply to all districts, including school, sewer, water, utility, and local and regional park districts of any kind or class, are declaratory of, and not a change in, existing law.

(b) (1) "Surplus land" means land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use. Land shall be declared either "surplus land" or "exempt surplus land," as supported by written findings, before a local agency may take any action to dispose of it consistent with an agency's policies or procedures. A local agency, on an annual basis, may declare multiple parcels as "surplus land" or "exempt surplus land."

(2) "Surplus land" includes land held in the Community Redevelopment Property Trust Fund pursuant to Section 34191.4 of the Health and Safety Code and land that has been designated in the long-range property management plan approved by the Department of Finance pursuant to Section 34191.5 of the Health and Safety Code, either for sale or for future development, but does not include any specific disposal of land to an identified entity described in the plan.

(3) Nothing in this article prevents a local agency from obtaining fair market value for the disposition of surplus land consistent with Section 54226.

(c) (1) Except as provided in paragraph (2), "agency's use" shall include, but not be limited to, land that is being used, is planned to be used pursuant to a written plan adopted by the local agency's governing board for, or is disposed to support pursuant to subparagraph (B) of paragraph (2) agency work or operations, including, but not limited to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants.

(2) (A) "Agency's use" shall not include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development. Property disposed of for the sole purpose of investment or generation of revenue shall not be considered necessary for the agency's use.

(B) In the case of a local agency that is a district, excepting those whose primary mission or purpose is to supply the public with a transportation system, "agency's use" may include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development or be for the sole purpose of investment or generation of revenue if the agency's governing body takes action in a public meeting declaring that the use of the site will do one of the following:

(i) Directly further the express purpose of agency work or operations.

(ii) Be expressly authorized by a statute governing the local agency, provided the district complies with Section 54233.5 where applicable.

(d) "Open-space purposes" means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources.

(e) "Persons and families of low or moderate income" has the same meaning as provided in Section 50093 of the Health and Safety Code.

(f) (1) Except as provided in paragraph (2), "exempt surplus land" means any of the following:

(A) Surplus land that is transferred pursuant to Section 25539.4 or 37364.

(B) Surplus land that is (i) less than 5,000 square feet in area, (ii) less than the minimum legal residential building lot size for the jurisdiction in which the parcel is located, or 5,000 square feet in area, whichever is less, or (iii) has no record access and is less than 10,000 square feet in area; and is not contiguous to land owned by a state or local agency that is used for open-space or low- and moderate-income housing purposes. If the surplus land is not sold to an owner of contiguous land, it is not considered exempt surplus land and is subject to this article.

(C) Surplus land that a local agency is exchanging for another property necessary for the agency's use.

(D) Surplus land that a local agency is transferring to another local, state, or federal agency for the agency's use, or to a federally recognized California Indian tribe.

(E) Surplus land that is a former street, right-of-way, or easement, and is conveyed to an owner of an adjacent property.

(F) Surplus land that is put out to open, competitive bid by a local agency, provided all entities identified in subdivision (a) of Section 54222 will be invited to participate in the competitive bid process, for either of the following purposes:

(i) A housing development, which may have ancillary commercial ground floor uses, that restricts 100 percent of the residential units to persons and families of low or moderate income, with at least 75 percent of the residential units restricted to lower income households, as defined in Section 50079.5 of the Health and Safety Code, with an affordable sales price or an affordable rent, as defined in Sections 50052.5 or 50053 of the Health and Safety Code, for a minimum of 55 years for rental housing and 45 years for ownership housing, and in no event shall the maximum affordable sales price or rent level be higher than 20 percent below the median market rents or sales prices for the neighborhood in which the site is located.

(ii) A mixed-use development that is more than one acre in area, that includes not less than 300 housing units, and that restricts at least 25 percent of the residential units to lower income households, as defined in Section 50079.5 of the Health and Safety Code, with an affordable sales price or an affordable rent, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, for a minimum of 55 years for rental housing and 45 years for ownership housing.

(G) Surplus land that is subject to valid legal restrictions that are not imposed by the local agency and that would make housing prohibited, unless there is a feasible method to satisfactorily mitigate or avoid the prohibition on the site. An existing nonresidential land use designation on the surplus land is not a legal restriction that would make housing prohibited for purposes of this subparagraph. Nothing in this article limits a local jurisdiction's authority or discretion to approve land use, zoning, or entitlement decisions in connection with the surplus land.

(H) Surplus land that was granted by the state in trust to a local agency or that was acquired by the local agency for trust purposes by purchase or exchange, and for which disposal of the land is authorized or required subject to conditions established by statute.

(I) Land that is subject to Sections 17388, 17515, 17536, 81192, 81397, 81399, 81420, and 81422 of the Education Code and Part 14 (commencing with Section 53570) of Division 31 of the Health and Safety Code, unless compliance with this article is expressly required.

(J) Surplus land that is a former military base that was conveyed by the federal government to a local agency, and is subject to Article 8 (commencing with Section 33492.125) of Chapter 4.5 of Part 1 of Division 24 of the Health and Safety Code, provided that all of the following conditions are met:

(i) 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.

(ii) The affordability requirements for residential units shall be governed by a settlement agreement entered into prior to September 1, 2020. Furthermore, at least 25 percent of the initial 1,400 residential units developed shall be restricted to lower income households, as defined in Section 50079.5 of the Health and Safety Code, with an affordable sales price or an affordable rent, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, for a minimum of 55 years for rental housing and 45 years for ownership housing.

(iii) Prior to disposition of the surplus land, the agency adopts written findings that the land is exempt surplus land pursuant to this subparagraph.

(iv) Prior to the disposition of the surplus land, the recipient has negotiated a project labor agreement consistent with the local agency's project stabilization agreement resolution, as adopted on February 2, 2021, and any succeeding ordinance, resolution, or policy, regardless of the length of the agreement between the local agency and the recipient.

(v) The agency includes in the annual report required by paragraph (2) of subdivision (a) of Section 65400 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 defined in Section 50093 of the Health and Safety Code, or lower income households, as defined in Section 50079.5 of the Health and Safety Code.

A violation of this subparagraph is subject to the penalties described in Section 54230.5. Those penalties are in addition to any remedy a court may order for violation of this subparagraph or the settlement agreement.

(K) Real property that is used by a district for agency's use expressly authorized in subdivision (c).

(L) Land that has been transferred before June 30, 2019, by the state to a local agency pursuant to Section 32667 of the Streets and Highways Code and has a minimum planned residential density of at least 100 dwelling units per acre, and includes 100 or more residential units that are restricted to persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, with an affordable sales price or an affordable rent, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, for a minimum of 55 years for rental housing and 45 years for ownership housing. For purposes of this paragraph, not more than 20 percent of the affordable units may be restricted to persons and families of moderate income and at least 80 percent of the affordable units must be restricted to persons and families of lower income as defined in Section 50079.5 of the Health and Safety Code.

(2) Notwithstanding paragraph (1), a written notice of the availability of surplus land for open-space purposes shall be sent to the entities described in subdivision (b) of Section 54222 prior to disposing of the surplus land, provided the land does not meet the criteria in subparagraph (H) of paragraph (1), if the land is any of the following:

(A) Within a coastal zone.

(B) Adjacent to a historical unit of the State Parks System.

(C) Listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places.

(D) Within the Lake Tahoe region as defined in Section 66905.5.

**SEC. 2.** The Legislature 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.