STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY EDMUND G. BROWN JR., *Governor*

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MEMORANDUM

DATE: March 27, 2015

TO: Planning Directors and Interested Parties

FROM: Glen A. Campora, Assistant Deputy Director
Division of Housing Policy Development

SUBJECT: **Local Agency Surplus Land and Affordable Housing Chapter 677, Statutes of 2014 (Assembly Bill 2135)**

This memorandum is to inform of AB 2135 amendments to California law, effective January 1, 2015, prescribing procedures for the sale or disposition of surplus land by local agencies (Government Code Sections 54220 – 54223). The primary purpose of the amendments is to prioritize use of surplus property sites to increase the supply of housing affordable to lower income households.

AB 2135, among other changes, requires:

- The qualified entity proposing purchase or lease of the surplus land for affordable housing to agree to make available to lower income households a minimum of 25% of total units at an affordable housing cost for a period of at least 55 years, and

- Requires any surplus property developed with 10 or more residential units to include at least 15% of the units as housing affordable to lower income households.

For assistance, AB 2135 language is included as Attachment A. To facilitate implementation, local agencies may adopt policies, programs or procedures. Refer to Attachment B for a sample policy that can be included in the Housing Element. If you have any questions, please contact Greg Nickless, Housing Policy Analyst, at 916-274-6244.

ATTACHMENT A

ARTICLE 8

AB-2135 Surplus Land (54000 – 54233)

(Heading of Article 8 amended by Statutes 1982, Chapter 1442, Section 1.)

Section 54220 of the Government Code is amended to read:

54220. (a) The Legislature reaffirms its declaration that housing is of vital statewide importance to the health, safety, and welfare of the residents of this state and that provision of a decent home and a suitable living environment for every Californian is a priority of the highest order. The Legislature further declares that there is a shortage of sites available for housing for persons and families of low and moderate income and that surplus government land, prior to disposition, should be made available for that purpose.

(b) The Legislature reaffirms its belief that there is an identifiable deficiency in the amount of land available for recreational purposes and that surplus land, prior to disposition, should be made available for park and recreation purposes or for open-space purposes. This article shall not apply to surplus residential property as defined in Section 54236.

(c) The Legislature reaffirms its declaration of the importance of appropriate planning and development near transit stations, to encourage the clustering of housing and commercial development around such stations. Studies of transit ridership in California indicate that a higher percentage of persons who live or work within walking distance of major transit stations utilize the transit system more than those living ~~elsewhere. The~~ *elsewhere, and that lower income households are more likely to use transit when living near a major transit station than higher income households. The sale or lease of surplus land at less than fair market value to facilitate the creation of affordable housing near transit is consistent with goals and objectives to achieve optimal transportation use. The* Legislature also notes that the Federal Transit Administration gives priority for funding of rail transit proposals to areas that are implementing higher-density, ~~mixed-use~~ *mixed-use, and affordable* development near major transit stations.

54221. (a) As used in this article, the term "local agency" means every city, whether organized under general law or by charter, county, city and county, and district, including school districts of any kind or class, empowered to acquire and hold real property.

(b) As used in this article, the term "surplus land" means land owned by any local agency, that is determined to be no longer necessary for the agency's use, except property being held by the agency for the purpose of exchange.

(c) As used in this article, the term "open-space purposes" means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources.

(d) As used in this article, the term "persons and families of low or moderate income" means the same as provided under Section 50093 of the Health and Safety Code.

(e) As used in this article, the term "exempt surplus land" means either of the following:

(1) Surplus land that is transferred pursuant to Section 25539.4.

(2) Surplus land that is (A) less than 5,000 square feet in area, (B) 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 (C) 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 park, recreational, open-space, or low- and moderate-income housing purposes and is located neither within an enterprise zone pursuant to Section 7073 nor a designated program area as defined in Section 7082. 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.

(f) Notwithstanding subdivision (e), the following properties are not considered exempt surplus land and are subject to this article:

(1) Lands within the coastal zone.

(2) Lands within 1,000 yards of a historical unit of the State Parks System.

(3) Lands within 1,000 yards of any property that has been listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places.

(4) Lands within the Lake Tahoe region as defined in Section 66905.5.

(Amended by Stats. 2008, Ch. 532, Sec. 9. Effective January 1, 2009.)

54222. Any local agency disposing of surplus land shall send, prior to disposing of that property, a written offer to sell or lease the property as follows:

(a) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local public entity, as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, shall be sent, upon written request, a written offer to sell or lease surplus land for the purpose of developing low- and moderate-income housing. All notices shall be sent by first-class mail and shall include the location and a description of the property. With respect to any offer to purchase or lease pursuant to this subdivision, priority shall be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent:

(1) To any park or recreation department of any city within which the land may be situated.
(2) To any park or recreation department of the county within which the land is situated.
(3) To any regional park authority having jurisdiction within the area in which the land is situated.
(4) To the State Resources Agency or any agency that may succeed to its powers.
(c) A written offer to sell or lease land suitable for school facilities construction or use by a school district for open-space purposes shall be sent to any school district in whose jurisdiction the land is located.
(d) A written offer to sell or lease for enterprise zone purposes any surplus property in an area designated as an enterprise zone pursuant to Section 7073 shall be sent to the nonprofit neighborhood enterprise association corporation in that zone.
(e) A written offer to sell or lease for the purpose of developing property located within an infill opportunity zone designated pursuant to Section 65088.4 or within an area covered by a transit village plan adopted pursuant to the Transit Village Development Planning Act of 1994 (Article 8.5 (commencing with Section 65460) of Chapter 3 of Division 1 of Title 7) shall be sent to any county, city, city and county, community redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located.
(f) The entity or association desiring to purchase or lease the surplus land for any of the purposes authorized by this section shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.
(Amended by Stats. 2008, Ch. 532, Sec. 10. Effective January 1, 2009.)

54222.3. Section 54222 shall not apply to the disposal of exempt surplus land as defined in Section 54221 by an agency of the state or any local agency.
(Added by Stats. 1988, Ch. 964, Sec. 2.)

Section 54222.5 is added to the Government Code, to read:

54222.5. *An entity proposing to use the surplus land for developing low- and moderate-income housing shall agree to make available not less than 25 percent of the total number of units developed on the parcels at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or affordable rent, as defined in Section 50053 of the Health and Safety Code, to lower income households, as defined in Section 50079.5 of the Health and Safety Code. Rental units shall remain affordable to, and occupied by, lower income households for a period of at least 55 years. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with paragraph (2) of subdivision (c) of Section 65915. These requirements shall be contained in a covenant or restriction recorded against the surplus land at the time of sale, which shall run with the land and shall be enforceable, against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the following:*

(a) The local agency that disposed of the property.
(b) A resident of a unit subject to this section.
(c) A residents association with members who reside in units subject to this section.
(d) A former resident of a unit subject to this section who last resided in that unit.
(e) An applicant seeking to enforce the covenants or restrictions for a particular unit that is subject to this section, if the applicant conforms to all of the following:
(1) Is of low or moderate income, as defined in Section 50093 of the Health and Safety Code.
(2) Is able and willing to occupy that particular unit.
(3) Was denied occupancy of that particular unit due to an alleged breach of a covenant or restriction implementing this section.
(f) A person on an affordable housing waiting list who is of low or moderate income, as defined in Section 50093 of the Health and Safety Code, and who is able and willing to occupy a unit subject to this section.

Section 54223 of the Government Code is amended to read:

54223. After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than ~~60~~ *90* days, the land may be disposed of without further regard to this ~~article.~~ *article, except that Section 54233 shall apply.*

54224. Nothing in this article shall preclude a local agency, housing authority, or redevelopment agency which purchases land from a disposing agency pursuant to this article from reconveying the land to a nonprofit or for-profit housing developer for development of low- and moderate-income housing as authorized under other provisions of law.
(Repealed and added by Stats. 1982, Ch. 1442, Sec. 6.)

Section 54225 of the Government Code is amended to read:

54225. Any public agency selling surplus land to an entity described in Section 54222 for park or recreation purposes, for open-space purposes, for school purposes, or for low- and moderate- income housing purposes may provide for a payment period of up to 20 years in any contract of sale or sale by trust deed ~~of such land.~~ *for the land. The payment period for surplus land sold for housing for persons and families of low and moderate income may exceed 20 years, but the payment period shall not exceed the term that the land is required to be used for low- or moderate-income housing.*

Section 54226 of the Government Code is amended to read:

54226. ~~Nothing in this~~ *This* article shall *not* be interpreted to limit the power of any local agency to sell or lease surplus land at fair market value or at less than fair market value, and ~~nothing in this article shall be interpreted to empower any local agency to sell or lease surplus land at~~ *any such sale or lease at or* less than fair market ~~value.~~ *value consistent with this article shall not be construed as inconsistent with an agency's purpose.* No provision of this article shall be applied when it conflicts with any other provision of statutory law.

Section 54227 of the Government Code is amended to read:

54227. *(a)* In the event that any local agency disposing of surplus land receives offers for the purchase or lease of that land from more than one of the entities to which notice and an opportunity to purchase or lease shall be given pursuant to this article, the local agency shall give first priority to the entity that agrees to use the site for housing ~~for persons and families of low or moderate income, except that first priority shall be given to an~~ *that meets the requirements of Section 54222.5. If the local agency receives offers from more than one* entity that agrees to ~~use the site for park or recreational purposes if the land being offered is already being used and will continue to be used for park or recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.~~ *meet the requirements of Section 54222.5, then the local agency shall give priority to the entity that proposes to provide the greatest number of units that meet the requirements of Section 54222.5 at the deepest level of affordability.*

(b) Notwithstanding subdivision (a), first priority shall be given to an entity that agrees to use the site for park or recreational purposes if the land being offered is already being used and will continue to be used for park or recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.

54230. The board of supervisors of any county may establish a central inventory of all surplus governmental property located in such county.
(Added by Stats. 1974, Ch. 1339.)

54230.5. The failure by a local agency to comply with this article shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value.
(Amended by Stats. 2008, Ch. 532, Sec. 13. Effective January 1, 2009.)

54231. Land acquired by a local agency for highway purposes through the expenditure of funds allocated pursuant to Chapter 3 (commencing with Section 2100) of Division 3 of the Streets and Highways Code may be retained by the local agency, or transferred to another local agency, for public park and recreational purposes if the land is no longer necessary for highway purposes, and if the local agency having jurisdiction over such land determines that the use of such land for public park and recreational purposes is the highest and best use of the land.
(Added by Stats. 1975, Ch. 852.)

54232. Land retained or transferred for public park and recreational purposes pursuant to Section 54231 shall be developed within 10 years, and shall be used for at least 25 years, following such retention or transfer for such purposes in accordance with the general plan for the city or county in which the land is located. Otherwise, the land shall be sold by the local agency, and the funds received from the sale shall be used for highway purposes. If the land originally had been transferred for such purposes, it shall revert to the original acquiring local agency for such sale.
(Added by Stats. 1975, Ch. 852.)

Section 54233 is added to the Government Code, to read:

54233. *If the local agency does not agree to price and terms with an entity to which notice and an opportunity to purchase or lease are given pursuant to this article and disposes of the surplus land to an entity that uses the property for the development of 10 or more residential units, the entity or a successor-in-interest shall provide not less than 15 percent of the total number of units developed on the parcels at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or affordable rent, as defined in Section 50053 of the Health and Safety Code, to lower income households, as defined in Section 50079.5 of the Health and Safety Code. Rental units shall remain affordable to, and occupied by, lower income households for a period of at least 55 years. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of Section 65915. These requirements shall be contained in a covenant or restriction recorded against the surplus land prior to land use entitlement of the project, and the covenant or restriction shall run with the land and shall be enforceable, against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5.*

If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the G

ATTACHMENT B
(AB-2135 Surplus Land)

Sample Policy for AB 2135

Policy XXXX – Sale of Surplus Land and Affordable Housing

During the disposal of surplus land, the local agency shall negotiate in good faith with entities that respond to the local agency's offer to sell or rent surplus property, pursuant to Government Code Sections 54222. Land sold for affordable housing shall be required to provide 25 percent of the units at affordable housing cost to lower-income households and to maintain the affordable housing units within the development at a cost to lower-income households for a period of at least 55 years.