



Affordable Housing Law Alert:
**Assembly Bill 2135 Strengthens Priorities for Affordable Housing
on Public Surplus Land**

Last year saw significant changes to an important law for affordable housing developers and advocates. Assembly Bill 2135¹—authored by Assemblymember Phil Ting (D – San Francisco), sponsored by the Non-Profit Housing Association of Northern California (NPH), and supported by Public Counsel—strengthens priorities for affordable housing in the state’s Surplus Land Act.² The bill was signed into law last fall and became effective January 1, 2015.

Enacted in 1968, the Surplus Land Act requires local agencies—such as cities and transit agencies—to prioritize affordable housing, as well as parks and open space, when disposing of surplus land. Specifically, local agencies must provide a first right of refusal to entities that agree to use sites for affordable housing or parks and open space.³ When local agencies dispose of surplus land, they are required to give notice to local public entities and organizations involved in affordable housing development. Once a preferred entity expresses interest, the parties must enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. Prior to AB 2135, if the parties did not agree to a price within 60 days, the local agency could then dispose of the land without further requirements.

Following AB 2135, the Surplus Land Act’s system of prioritization for affordable housing has been significantly strengthened. Any entity proposing to use surplus land for the development of low or moderate income housing must make at least 25% of the units affordable to lower income households.⁴ If multiple entities compete for a piece of land, priority is given to the project that proposes the greatest number of affordable units at the deepest level of affordability.⁵ AB 2135 also extends the negotiating period between local agencies and purchasing or leasing entities from 60 days to 90 days.⁶

¹ Assembly Bill No. 2135, 2014 Cal. Stat., ch. 677 (effective Jan. 1, 2015). AB 2135 amended sections 54220, 54223, 54225, 54226, and 54227 of, and added sections 54222.5 and 54223 to, the Government Code.

² Cal. Gov’t Code § 54220 et seq.

³ If an agency receives multiple offers, priority is generally given first to affordable housing, and then to parks and open space, unless the land is already being used for park and recreational purposes, or has been designated for that purpose in local planning. Cal. Gov’t Code § 54227.

⁴ Cal. Gov’t Code § 54222.5.

⁵ *Id.* § 54227(a).

⁶ *Id.* § 54223.

If the local agency does not agree to price and terms with an entity given notice and the opportunity to purchase or lease under the Act, and the land is transferred for residential development of 10 or more units, then AB 2135 requires 15% of the housing units to be affordable to lower income households.⁷ This requirement applies regardless of the entity developing the housing and continues to apply to successors in interest.⁸

AB 2135 also extends the affordable housing units' required term of affordability to 55 years.⁹ It requires covenants or restrictions, which run with the land and may be enforced against any owner who violates them, to ensure that affordability requirements are maintained through changes of ownership.¹⁰ The relevant provisions require housing to be affordable to lower income households, defined as households whose income does not exceed the income limits established by the U.S. Department of Housing and Urban Development pursuant to Section 8 programs, which is typically 80% of area median income.¹¹ Affordable rents generally cannot exceed 30% of the relevant income limit for lower, very low, and extremely low income households, respectively.¹²

The Act also now explicitly empowers local agencies to sell or lease surplus land for less than fair market value if the purpose of the transaction is affordable housing development. AB 2135 removed language stating that “nothing in [the Act] shall be interpreted to empower any local agency to sell or lease surplus land [at less than fair market value],” while maintaining language stating that the Act “shall not be interpreted to limit the power of any local agency to sell or lease surplus land at . . . less than fair market value.”¹³ It also added that any such sale or lease “shall not be construed as inconsistent with an agency’s purpose.”¹⁴ Taken together, these revisions expressly empower agencies to offer surplus land at less than fair market value. AB 2135 also extended the Act’s payment period for land sold for affordable housing, permitting the payment period to exceed a previous limit of 20 years.¹⁵

Finally, the revised Act has positive implications for transit oriented development. The Act now recognizes that transit ridership benefits from affordable housing, affirming research indicating that lower income households are more likely to use transit when living near a major transit station than higher income households.¹⁶ The Act specifically declares that selling and leasing land at less than fair market value to facilitate the creation of affordable housing near transit is “consistent with the goals and objectives to achieve optimal

⁷ Cal. Gov’t Code § 54233.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* § 54222.5.

¹¹ *See id.* §§ 54222.5, 54233; Cal. Health & Safety Code § 50079.5.

¹² *See* Cal. Gov’t Code §§ 54222.5, 54233; Cal. Health & Safety Code § 50053.

¹³ *See* Assembly Bill No. 2135, 2014 Cal. Stat., ch. 677; Cal. Gov’t Code § 54226.

¹⁴ *See id.*

¹⁵ Cal. Gov’t Code § 54225. Note that the payment period may not exceed the term of affordability. *Id.*

¹⁶ *See id.* § 54220. *See, e.g.,* California Housing Partnership Corporation & TransForm, *Why Creating and Preserving Affordable Homes Near Transit is a Highly Effective Climate Protection Strategy* (May 2014).

transportation use.”¹⁷ Thus, local agencies interested in promoting transit ridership by facilitating the development of affordable housing near transit have clear authority in state law to pursue these practices.

AB 2135 has bolstered the Surplus Land Act as a tool for promoting affordable housing. Now attention must turn to implementation. Since the law became effective January 1, 2015, local agencies should ensure that policies comply with the provisions of the revised Act, and be sure to follow its requirements when disposing of surplus land. The Act’s new provisions could also be instructive as a model for strategic disposition of public land, in general. This would extend the reach of this important tool for promoting the development of affordable housing.

In order to make sure that this law is properly followed and implemented, developers should call on cities, counties, and local agencies to adopt clear policies for land disposition that prioritize affordable housing, consistent with the state law. Affordable housing developers interested in taking advantage of the newly strengthened Act should learn how their local jurisdictions track surplus land and notify potential buyers, send letters to request notification when surplus land becomes available, monitor local plans for surplus land, and inquire into opportunities to purchase at a discount. This will help the Act to achieve its ultimate purpose of increasing affordable housing.

For more information on AB 2135 and the revised Surplus Land Act, please feel free to contact Adam Cowing or Doug Smith in Public Counsel’s Community Development Project.

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¹⁷ Cal. Gov’t Code § 54220(c).