

From: Richard Bangert
To: Marilyn Ezzy Ashcraft; Malia Vella; Trish Spencer; Tony Daysog; John Knox White
Cc: Eric Levitt; Gerry Beaudin; Lara Weisiger
Subject: [EXTERNAL] Correspondence - Agenda Item 9B - Surplus Lands Act discussion - May 4 CC meeting
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Attachments: [Surplus Lands Act referral comments.pdf](#)

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Richard Bangert

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Blog: <https://alamedapointenviro.com/>

May 3, 2021

Subject: Agenda Item 9B, Council Referral to discuss Surplus Lands Act, May 4, 2021

Dear Mayor Ezzy Ashcraft and members of the City Council,

On July 7, 2020, the City Council authorized retention of a lobbyist to address the purported impact of Assembly Bill No. 1486 on redevelopment of Alameda Point.

I think that the City did not interpret the Surplus Lands Act amendment correctly and that Alameda Point is actually exempt from the Act. Thus, the developer selection process for the 22-acre Enterprise District site was unnecessarily delayed. I base this opinion on the recent actions of the City of Concord.

On April 16, 2021, the City of Concord restarted its selection process for a master developer for the former Concord Naval Weapons Station by issuing a request for qualifications (RFQ). They expect to select a master developer by the Fall.

I asked Guy Bjerke, the Economic Development and Base Reuse Director for the City of Concord, how Concord was planning to deal with the changes to the Surplus Lands Act. He replied, "We have determined we are exempt as we are following the federal BRAC [Base Realignment and Closure] process." He directed me to Section 1.5 of Concord's RFQ (see below), which presents the rationale for their determination.

In a nutshell, Concord has determined that the federal military base disposition process cannot be interfered with by state requirements that would effect the agreed upon disposition process.

Put another way, the purpose for which the military land is acquired is to implement the base reuse plan. That purpose terminates upon the city's sale of the property. The land is never "surplus land" by the customary definition, meaning "of no purpose to the government agency."

In addition, Concord submits that even if the Surplus Lands Act did apply to former military bases, the Naval Weapons Station project would still be exempt because the development plan calls for 25 percent of the housing to be affordable.

I urge the City Council to renew its engagement with the 10 developers that submitted applications for developing the 22-acre Enterprise District site in 2019. It's unfortunate that there has been confusion and misunderstanding regarding the impact of AB 1486. But it's not too late to get back on track.

As to the widespread desire to expand the amount of affordable housing at Alameda Point, including from Council Member Herrera Spencer who submitted this referral, the City Council can, at its discretion, identify an area for 100% affordable housing, draft a master plan through the normal planning process, and submit it to the affordable housing developer community. Adding affordable housing units will not trigger the imposition of a penalty or surcharge per unit from the Navy.

Thank you,
Richard Bangert

Excerpts from
Concord Naval Weapons Station, Request for Master Developer Qualifications
Published April 16, 2021

1.5 Changes in State Law Governing Surplus Land Disposition

Since the City's prior Master Developer selection process in 2014-2016, the State of California has substantially amended the State Surplus Land Act, Government Code sections 54220-54234 (SLA), which sets forth procedural requirements cities and other local agencies must follow when disposing of land that is no longer needed for the agency's use. As more fully explained below, the City has determined that: (1) at least with respect to Economic Development Conveyances, the SLA is preempted by the comprehensive and detailed scheme for transfer, disposition and development of former military base property set forth in BRAC, and (2) even if the SLA were deemed applicable to the City's disposition of the Development Footprint, the City's affordable housing requirements for the property as described in Section 3.15 below, meet the requirements for the Development Footprint to be considered "exempt surplus land" under SLA section 54221(f)(1)(F)(ii).

1.5.1 Federal Preemption

BRAC sets forth a comprehensive and detailed scheme for transfer, disposition and development of former military base property. BRAC provides for a variety of authorities for transfer of former military facilities. In the case of Concord, the Development Footprint is proposed to be transferred to the City, as LRA, pursuant to an EDC transfer mechanism because of the extensive job generation on the former installation (see Section 2.3.1). BRAC requires preparation of a Reuse Plan and Homeless Assistance Submission to explain the proposed reuses of the military installation. BRAC also requires that the Reuse Plan will achieve a balance in responding to the community's economic development needs, and the needs of the homeless. As required by BRAC, the LRA prepared a Reuse Plan, a regional homeless needs assessment and conducted extensive outreach to solicit interest from homeless housing and service providers to satisfy the homeless needs. The identified need was for multifamily transitional housing and job training. Federal regulations required the LRA to advertise the availability of surplus buildings and properties to state and local eligible parties, including homeless assistance providers, conduct a public workshop, and direct outreach to homeless

assistance providers to define how the needs could be met. Compliance with BRAC was brought to closure through the development of legally binding agreements approved by the US Department of Housing and Development (HUD) with affordable housing providers in a collaborative (Contra Costa County Continuum of Care) and the Contra Costa/Solano Food Bank for dedication of land for multifamily homeless housing and a food bank/warehouse training facility.

By adopting BRAC, Congress announced an intention to require LRAs to redevelop military base properties to provide for job creation and economic development to replace jobs lost as a result of base closure and to balance these economic development considerations with the needs of the homeless. Federal regulations also specifically require the Navy to consider a list of specified factors in determining whether to approve an EDC, including the “[e]xtent of short- and long-term job generation,” the “[f]inancial feasibility of the development and proposed consideration, including financial and market analysis and the need and extent of proposed infrastructure and other investments” and “[c]urrent local and regional real estate market conditions, including market demand for the property.”

The 2019 amendments to the SLA implemented by AB 1486 directly contravene BRAC requirements by, among other things, specifically excluding from the definition of “agency’s use” any development for “commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development” or dispositions for “the sole purpose of investment or generation of revenue.” Furthermore, the provisions in Government Code section 54230.5 requiring disgorgement of a percent of the gross sale price if the disposing agency fails to comply with the Act is in direct conflict with BRAC provisions requiring all proceeds obtained from the sale or use of former base property to either be paid to the federal government as consideration for the Economic Development Conveyance or used for specified listed purposes to support economic redevelopment of the former base for at least seven years under threat of recoupment from the federal government.

1.5.2 Consistency with Exempt Surplus Land Definition in Gov. Code Section 54221(f)(1)(F)(ii)
While the SLA, as amended by AB 1486, directly conflicts with various requirements of BRAC and is therefore preempted, the City strongly supports the affordable housing goals embodied by AB 1486. Since the City first approved the CRP Area Plan, the City has been committed to a goal that 25% of the residential dwelling units developed on the Development Footprint be available to low-income households at an affordable rent or affordable housing cost. SLA Section 54221(f)(1)(F)(ii) states that “exempt surplus land” includes “[s]urplus 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. . . [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 . . .with an affordable sales price or an affordable rent . . .for a minimum of 55 years for rental housing and 45 years for ownership housing”.

As set forth in Section 3.15 below, the City is seeking a Master Developer who can commit to support delivery of at least 25% of the total number of residential units as affordable units available to lower income households. Further, notice of issuance of this RFQ has been provided to the State Department of Housing and Community Development and all entities identified in Section 54222(a) of the SLA. Accordingly, the City has determined that even if the SLA were deemed to apply to disposition of the Development Footprint, this RFQ and the affordable housing requirements for the Project set forth in Section 3.15, meet the requirements for the Development Footprint to be deemed “exempt surplus land” under SLA section 54221(f)(1)(F)(ii).