

Public Land for Affordable Housing

This refers to policies to prioritize the reuse of publicly owned land for affordable and mixed-income housing that go beyond existing state law, typically accompanied by prioritization of available funding for projects on these sites. High land costs can make it difficult to create new affordable housing for low- or moderate-income households, particularly in high-value, amenity-rich locations. Local jurisdictions can help overcome this obstacle by identifying publicly-owned land or property (including surplus government agency property and tax delinquent/seized property) that can be repurposed for residential use and making it available to developers who commit to creating and maintaining ongoing affordability. Utilizing public land can increase feasibility for developing affordable housing.

Legal Context

What Does State Law Require?

The [Surplus Lands Act \(Government Code Sections 54220 - 54234\)](#) requires local agencies to declare land that is no longer needed for government purposes as surplus through a public process and offer it first to affordable housing developers and public entities before selling it. If one of these interested entities acquires the land, at least 25% of units developed must be affordable. However, if 90 days pass without reaching an agreement with one of these interested parties, then the affordability requirement for whatever development occurs on the land is 15% if 10 or more residential units are developed. Depending upon site characteristics, development proposal and community goals, agencies can comply with the SLA through the “Exempt” or “Surplus” route. SLA also includes penalties for local agencies that violate the Act when disposing of surplus lands.

At-A-Glance

RELEVANT STATE LAWS

[Surplus Land Act](#)

POTENTIAL FUNDING SOURCE

- Housing Trust Funds
- General Fund

COST

Medium.

ADMINISTRATIVE BURDEN

 High

Staff capacity required to identify potential sites, select sites, model development potential and potential value recapture, determine jurisdictions potential partnership role, seek a development partner and negotiate and execute a Development Agreement.

EXTRA CONSIDERATIONS

 Highly effective

WHICH P?

Production

POTENTIAL PARTNERS

- Community land trusts
- Affordable housing developers
- Public agencies who own land within the jurisdiction



OPTION FOR TOC POLICY COMPLIANCE?

Yes!



How Can Jurisdictions Implement Programs That Go Beyond State Law?

Jurisdictions can donate land, sell land at a deep discount or transfer land using a below-market, long-term ground lease to affordable housing developers or community land trusts. Jurisdictions can also incentivize the use of public land for affordable housing through

zoning, fee waivers and/or permit streamlining. They can require deeper affordability, for example that more than 25% of units are affordable to lower-income households earning 80% of AMI or less. They can also catalogue underutilized public parcels that do not qualify as “surplus” but have the potential to be redeveloped for affordable housing.

Program Design, Implementation and Evaluation Considerations

The callout box below labeled “TOC Policy Requirements” describes the policy features necessary for a jurisdiction to receive credit toward TOC Policy compliance. All other policy features discussed in this document represent details found in existing policies on the subject and a jurisdiction may want to consider them when adopting or implementing a policy, but nothing is required for TOC Policy compliance unless noted as a requirement in the “TOC Policy Requirements” callout box or the [TOC Policy Administrative Guidance](#).

Elements of the Program

- Inventory of publicly owned sites
- Standards for planning, leasing and disposing of publicly-owned land
- Clear criteria for what sites qualify
- Affordability requirements
- Development partners

Program Design Considerations

Jurisdictions may want to consider the following:

INVENTORY OF PUBLIC LAND: Developing an inventory of public land, including locally-owned sites that qualifies as “surplus” under State law, excess state land and any other underutilized publicly owned parcels. Jurisdictions can then evaluate the inventory to better understand each site’s readiness. Key site considerations include site conditions, appropriate zoning, infrastructure needs, community support and environmental considerations.

MARKET STUDY: Conducting a market study to understand the feasibility and developability of the sites. The site’s market factors, including affordability targets, cost estimates, potential uses and density and competitiveness for state

and local funding can help evaluate both the viability of development and gauge level of developer interest.

SITE PRIORITIZATION: Creating parameters to rank and prioritize sites based on the market study and community engagement. Jurisdictions can evaluate sites for competitiveness for local and state affordable housing funding, including access to transit, neighborhood amenities, high resource areas and other important and emerging factors. Discussions with residents and neighborhood stakeholders can also contribute to site prioritization. Jurisdictions can then make a work plan that prioritizes projects that can be developed within the forthcoming development cycles.

DEVELOPMENT PARTNERS: Engaging with housing developers throughout the planning process. Some jurisdictions establish working groups which include affordable and market rate developers as a springboard for developing concepts for public lands development projects, before soliciting development proposals. Depending on the proposed program for a site and the potential scale of the development, jurisdictions may pursue one or many development partners.

ELIGIBILITY: Determining if eligibility is limited to nonprofit organizations or open to all developers who agree to commit to affordability requirements. Cities may also require developers to demonstrate a track record of successful development and management of affordable or mixed-income housing.

LAND AGREEMENT: Some jurisdictions choose to sell public land, while others choose to maintain ownership and offer a ground lease to a developer. For example, jurisdictions may wish to maintain ownership when the site includes meaningful infrastructure, access easements or other public amenities. Ground leases are often essential for a project's financial feasibility and for ensuring permanent affordability.

Conducting Due Diligence: Jurisdictions should conduct thorough due diligence—such as title searches, site planning, rezoning, surveys and environmental assessments—to identify potential risks and challenges tied to each site. Providing this information is essential, as developers are generally reluctant to engage without a certain level of confidence in a site's developability and want to avoid unexpected high costs later on. To support this work, jurisdictions should also explore funding sources that can help cover the costs of these technical studies.

STREAMLINED APPROVALS: Making developers of affordable housing on former publicly-owned land automatically eligible for an expedited permitting process.

AFFORDABILITY REQUIREMENTS: Establishing affordability requirements for all public lands. The Surplus Lands Act requires jurisdictions to seek 25% affordability, and many jurisdictions can realize an even higher share of affordable housing. Jurisdictions can recapture public value offered on a public lands deal, such as discounted land, increased zoning, predevelopment work and any other process considerations, which enables more affordable housing. Jurisdictions can maximize

a site's affordability through multiple tools, including leveraging competitive housing dollars. Generally, jurisdictions can determine the maximum affordability a development agreement can support by conducting financial feasibility analysis and modeling different scenarios to determine how best to maximize affordable housing. Some jurisdictions use land residual models.

RFQ VS RFP: Determining whether a request for qualifications (RFQ) or request for proposal (RFP) is appropriate. RFQs enable jurisdictions to select the developer partner they want to work with based on qualifications and experience, allowing jurisdictions to identify capable partners without requiring a specific project plan up front. This also gives jurisdictions the ability to leverage a developer's expertise when defining project parameters. On the other hand, RFPs solicit detailed development proposals, including project concepts, financial proformas, design approaches and community benefits. RFPs are more appropriate when a jurisdiction has a well-defined vision or expectations for a site and is ready to evaluate concrete proposals.

INTERIM USES: Considering possible interim uses for the public land site that can provide amenities to the community before construction begins. Given that a site's interim use often becomes a community asset, it is key to determine how to transition or integrate the interim use into the permanent redevelopment project.

HOMEOWNERSHIP MODELS: Homeownership units can use shared equity ownership models intended to keep units permanently affordable, while maintaining accordance with state law.

NEIGHBORHOOD COORDINATION: Thinking about neighboring sites in a holistic manner to better meet community needs.

INTERNAL CAPACITY: Matching goals and expectations for development of public land with available staff and financial capacity.



TOC Policy Requirements: To comply with the TOC Policy, a jurisdiction must have a program or policy in the Housing Element that describes the redevelopment of publicly-owned land for affordable housing and aligns with the other requirements described below. In the absence of a Housing Element policy/program, the jurisdiction must adopt a public lands policy that includes a set of principles and standards for planning, leasing and disposing of publicly-owned land, as well as a defined set of implementation actions.

The jurisdiction must provide evidence of a recent, ongoing or planned housing development project on a public land site that meets the requirements of this policy. Though jurisdictions should prioritize affordable housing development on public land within the TOC area, a public lands project does not need to be within the TOC area to receive credit toward TOC Policy compliance. If the jurisdiction does not have an ongoing or planned public lands project, staff must demonstrate that at least one publicly-owned parcel in the jurisdiction has been deemed suitable for affordable housing development. If the recent, ongoing or planned housing development project on a public land site is not on land owned by the jurisdiction, the jurisdiction must provide evidence of financial support for the project. Financial support could be a grant/loan to the project or an in-kind contribution in the form of waivers for building permit fees, impact fees and other fees. At their discretion, MTC staff may allow a jurisdiction to count a non-monetary benefit provided to a project in lieu of financial support.

For both rental and ownership projects, eligible developments on publicly-owned land must exceed the Surplus Lands Act requirement to have at least 25% of units

affordable to lower-income households earning 80% of AMI or less. Additional affordable units beyond the 25% for lower-income households can target both lower- and moderate-income households earning up to 120% of AMI. Jurisdictions should require higher percentages of affordable units and/or deeper levels of affordability where feasible or through offering additional incentives.

Affordable units must have recorded documents that set binding maximum rent or price restrictions to ensure affordability. These requirements must restrict rents and sales prices to affordable levels as defined by the rules of any applicable state or federal affordable housing program. These restrictions must also ensure affordability for at least 55 years for rental housing and at least 45 years for ownership housing.

Building on its Housing Element sites inventory and supplementary data provided by MTC/ABAG (if needed), the jurisdiction must create a comprehensive inventory of publicly-owned sites to identify opportunities to produce affordable or mixed-income housing. The site inventory must include both land that qualifies as “surplus” under the Surplus Lands Act and other currently underutilized sites owned by the jurisdiction and other public agencies (e.g., state, county and local agencies, as well as other public entities such as school districts).

The jurisdiction must demonstrate it has dedicated staff or consultant time for monitoring and advancing the public lands program, including periodic review and evaluation of the inventory of publicly-owned sites suitable for affordable housing development, outreach to affordable housing developers and updates to City Council/Board of Supervisors.

Program Implementation, Administration and Enforcement

Early and robust community engagement is key to successful development of public lands. Jurisdiction staff can work to understand the local context, which groups will be most impacted by the project and which local organizations are trusted and could play an active role in engagement. Jurisdictions can then conduct accessible and culturally-responsive community engagement, often through trusted and respected community partners.

Once sites have been identified, jurisdictions typically issue an RFQ or RFP, clearly stating approximate or anticipated density and unit count, affordability requirements, preferences for serving special populations and any other terms.

Jurisdictions will need to dedicate staff or consultant time to monitoring the public lands program, periodically reviewing the site inventory, conducting outreach to affordable housing developers and updating the City Council or Board of Supervisors.

Program Evaluation

To evaluate the effectiveness of Public Lands programs, jurisdictions can analyze the number of units developed on public lands, the level of affordability of the units developed and the demographics of the households housed.

Complementary Policies

AFFORDABLE HOUSING OVERLAY ZONE: Affordable housing overlay zones allow increased density and relaxed zoning regulations, making it easier and more attractive to develop affordable units on publicly-owned land.

This document is intended to provide general information and does not constitute legal advice. Additional facts, facts specific to a particular situation, or future developments may affect the subjects discussed in this document. Seek the advice of your jurisdiction's legal counsel before acting or relying upon this information. For specific questions regarding TOC compliance, please reach out to TOCpolicy@bayareametro.gov.

Other Resources

EXAMPLES*

[City of Belmont - Development Project](#)

[City of Burlingame - Underutilized Land Program](#)

[City of South San Francisco - Rotary Terrace Senior Housing](#)

OTHER RESOURCES

[MTC/ABAG - Public Lands Playbook](#)

[Association of Bay Area Governments - "Surplus Public Land: What Local Agencies Need to Know" Webinar](#)

[Enterprise Community Partners - Public Benefit from Publicly Owned Parcels: Effective Practices in Affordable Housing Development](#)

[Great Communities Collaborative - Public Land Resource Library](#)

[Local Housing Solutions - Use of Publicly Owned Land for Affordable Housing](#)

[Metropolitan Transportation Commission - Production Policy 4: Public Lands for Affordable Housing](#)

**Note that examples have not been vetted for full TOC Compliance.*