



Surplus & Underutilized Public Lands: Surplus Land Strategies that Support Affordable Housing (August 2020)

Introduction

The limited availability and high cost of land in the Silicon Valley poses a significant challenge to the creation of much needed affordable housing. According to the Turner Center for Housing Innovation, land prices increased by 76% across the nation between 2000 and 2016; in the Bay Area, it was closer to 100%, driving up the cost of development and making the development of new affordable housing—already a heavy lift-- that much harder.

In this highly competitive market, affordable housing developers often struggle to acquire parcels for new projects, particularly when faced with competition from market-rate developers with greater access to capital. For jurisdictions seeking to meet their affordable housing obligations and support nonprofit developers' efforts to increase the stock of affordable housing, surplus and/or underutilized public land provides one critical solution to this problem.

All jurisdictions and agencies with property assets have a role to play in stewarding the use of these resources for housing solutions. Cities, the County, State, transportation authorities, water districts, and school districts all possess land assets that could be sold or leased to produce affordable housing. The Metropolitan Transportation Commission (MTC) estimates that there are approximately 100 public sites -- totaling 84.5 acres -- suitable for housing near transit in Santa Clara County.¹ As MTC's study focuses on transit-oriented development, SV@Home believes that the number of acres that could be made available for affordable housing is significantly higher. Santa Clara County has already begun the process of decommissioning the Reid-Hillview Airport and identifying parcels in both the Civic Center and East Santa Clara Street Master Plan areas for affordable housing development, and the City of San Jose is actively working to refine its list of available parcels.

It is also important for jurisdictions to consider parcels that are underutilized and not currently considered "surplus." This includes parking lots or low-density buildings where housing could be integrated with other public uses.

State Surplus Land Law Governing Public Agencies

Surplus land is defined as "land owned by any agency of the state, or 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."

¹ MTC Action Plan

<https://mtc.ca.gov/sites/default/files/Public%20Lands%20Affordable%20Housing%20ActionPlan%20Sept%202018.pdf>

As required by State law ([California Surplus Land Law, Section 54220-54232 of the California Government Code](#)), when disposing of land that public agencies -- including local jurisdictions and special districts -- have designated as surplus land, the land must be first offered for sale or lease to affordable housing developers before it is offered to the public. If a local agency receives interest from an affordable housing developer, it must enter into good faith negotiations to determine a mutually agreed upon sales price or lease term.

With the passage of [Assembly Bill 2135](#) in 2014 (Ting, Chapter 677 of the Health and Safety Code), new requirements were added to California's Surplus Land Law to ensure that affordable housing developers who often are priced out of the market for land have the right of first refusal for public property.:

- Public agencies, when disposing of surplus lands, must give first priority ("right of first refusal") to organizations that will develop residential projects where at least 25% of the units are affordable to low- and very low-income residents.
- If the agency does not sell or lease the surplus land to a priority organization, then at least 15% of housing units developed on those sites must still be affordable.

There are Implementation challenges, however, as some charter cities have stated that Surplus Land Law does not apply in their jurisdictions.² While this continues to be disputed, important opportunities for affordable housing made possible through this law are being missed.

More recently, [Assembly Bill 1486](#), passed in the 2019 Legislative Cycle, expands reporting requirements for local agencies in their housing elements and annual progress reports, and requires the State Department of Housing and Community Development (HCD) to establish a surplus lands database for the State. [Senate Bill 6](#) (SB 6) outlines similar reporting requirements as AB 1486, and gives authority to HCD to review sites submitted by local agencies for their suitability for residential development. In addition to efforts in the legislature, Governor Newsom signed an [executive order](#) in spring of 2019 that gave authority to the Department of General Services (DGS) and HCD to establish an inventory of underutilized state owned land, identify sites feasible for housing development, and issue Requests For Proposals (RFP) to begin developing affordable housing on appropriate properties.

Regional and local entities are also setting affordable housing priorities on public land. MTC established a requirement as part of its [One Bay Area Grant Program](#) that a local jurisdiction must adopt a surplus land resolution in order to be eligible for funding. Some cities in Santa Clara County, including Campbell, Cupertino, and Morgan Hill have adopted Surplus Land Resolutions in response. The [Valley Transportation Authority \(VTA\) Joint Development Policy](#) established a per project target of 20% production for projects on VTA-owned property and a

² The City of San Jose believes they are exempt from state law due to their charter city status. In 2016, Housing California and Urban Habitat filed a lawsuit against the city, which was later dismissed. They organizations filed an appeal in spring of 2018 that is currently still open. <https://www.publicadvocates.org/resources/news/appeal-filed-in-affordable-housing-lawsuit-against-city-of-san-jose/>

[portfolio target of 35% affordable housing](#) (targeted at households earning 60% AMI and below). VTA's policy also specifies a requirement for deeper affordability, requiring that one half of affordable housing units be targeted to Extremely Low and Very Low-Income (ELI and VLI) households earning 50% of AMI or less.

SV@Home's Recommendations

The State is establishing itself as a key player in setting standards for prioritizing affordable housing on surplus public lands, continues to tighten reporting and oversight mechanisms, and is working to identify land it owns that is suitable for affordable housing production.

SV@Home recommends that the State review spatial guidelines for public facilities.³

Various state requirements dictate how government agencies plan and develop their facilities. Unpacking these guidelines could allow the state to adopt standards that increase efficiency and encourage density where appropriate for public facilities. We recognize that it is important to balance both on-site service delivery and future site demands, however, updating these standards has the potential of opening up additional public land throughout the state that would be suitable for housing development.

In addition to complying with legal requirements established by the state, SV@Home recommends that all cities take a proactive approach in establishing surplus land resolutions and implementation plans to leverage their surplus sites in service of meeting their affordable housing goals.

³Based on recommendation presented in the [CASA Compact](#), 2019 Element #8 Unlock Public Land for Affordable Housing.

SV@Home’s Best Practices for Surplus Lands

The following are SV@Home’s recommendations for effective local jurisdiction surplus land strategies, applicable to all jurisdictions regardless of charter city standing:

Recommendation	Rationale
<p>Create and maintain an inventory of existing sites.</p>	<p>As a first step toward understanding the development opportunities available on public sites, SV@Home recommends that a public agency document the surplus sites it owns and make this inventory available to the public. As a best practice, this inventory should be included in the city’s Housing Element analysis of opportunity sites. Assembly Bill 1486 is working to address this statewide, and local jurisdictions should apply resources to track this information consistently.</p>
<p>Define affordable housing as a priority on surplus land by adopting a Surplus Land Resolution.⁴</p>	<p>There are immense pressures on cities to dispose of surplus land for other priorities outside of housing. Due to the extreme demand for affordable housing in our communities, and for the capacity to deliver significant units on surplus land, it is important that affordable housing is established as a priority on these parcels.</p>
<p>Set affordability targets for individual sites.</p>	<p>State law requires that local agencies give priority to residential projects that will produce 25% affordable units public lands and require 15% of units produced on public land be affordable. Regional initiatives also create further incentives. Current discrepancies with state law put some onus on local governments to also establish their own targets to ensure affordable housing is prioritized. SV@Home recommends that public agencies adopt affordability targets for individual sites and consider the potential for a portfolio wide target of at least 25% affordable housing for low-income households.</p>

⁴ San Jose Surplus Land Resolution: <https://www.sanjoseca.gov/DocumentCenter/View/57079>

<p>Drive the timely implementation of the strategy by making necessary zoning changes and coordinate with other public agencies to encourage the use of surplus and underutilized public property for affordable housing.</p>	<p>To move from plan to implementation, local elected leaders should proactively zone surplus and underutilized property to allow high density affordable housing development. In addition to city owned land, cities should also update zoning on land owned by other agencies within their boundaries such as the county, VTA, and school districts to expedite high density affordable housing in these areas as well.</p>
<p>Offer land to affordable housing developers at a discounted rate.</p>	<p>The cost of land is a major driver of high housing prices. We encourage public entities to explore opportunities to offer land to affordable housing developers at no cost or at a discounted rate. By reducing land costs, project feasibility is increased and developers may be able to more deeply subsidize rents, enabling them to reach households at lower-income ranges.</p>