

Action # 16.2 Regional Actions to Support, Incentivize and Enforce Housing on Public Land

1.1	Key Element of CASA Compact	# 16. Public and surplus land for affordable housing (including enforcement of state surplus land laws)
1.2	Brief Description <i>1-3 sentence summary of action or policy</i>	<p>There are nearly 700 acres of developable publicly-owned land near transit in the region which could yield between 30,000 and 50,000 new homes. There is also more public land beyond the proximity of transit, but information on such public land is not compiled in any single location and thus, hard to analyze.</p> <p>Since there is great potential, multiple challenges to achieving a significant scale of development on public land need to be addressed:</p> <ul style="list-style-type: none"> • There is lack of agreement about the use of public land • Land may not be zoned adequately for development today • The State Surplus Land Act requires agencies to offer land for affordable housing, but many agencies do not understand or comply with the law • Many agencies lack the technical resources to implement sophisticated land development deals • Not all public land is equally competitive for low income housing tax credits and other affordable housing subsidy <p>Our status quo would be for each jurisdiction to handle these challenges independently. To create more efficiency in advancing outcomes, a regional entity could play a role in reducing barriers to housing development on public land by strategically coordinating information and resources across multiple agencies. Specifically, a regional entity could:</p> <ul style="list-style-type: none"> • Provide <u>technical support</u> to agencies struggling with disposition strategies, to prepare pre-development studies, development feasibility assessments and RFP/Qs for development of affordable housing on public land sites • Consider <u>grants to fund long term public facilities plans</u> with emphasis on freeing up land for housing • Offset the costs associated with <u>reconfiguration of public facilities</u> to accommodate housing development • Provide <u>funding incentives</u> for public agencies to offer their land at a discount for affordable housing development • <u>Coordinate use of public land</u> – i.e. encourage prioritization of competitive lands for affordable housing to have a higher share of affordability, through technical support, education of public agency • Secure the financial resources and legal ability to <u>bank land for future development</u> if a public agency is disposing of it.
1.3	Supports these CASA goals:	[] Protection [] Preservation [X] Production
1.4	Desired Effect <i>What problem would this solve? Who would benefit?</i>	<ul style="list-style-type: none"> • Increase production of homes throughout the whole region. • The specific populations will be everyone. Additional homes, especially in the specific location where new homes are built, will have relief and options from additional supply.
1.5	Key Questions and Points of Concern <i>What key questions or issues need to be resolved? What are the major</i>	<ul style="list-style-type: none"> • Some cities will resist more affordable housing, sometimes depending on specific locations of some public land. • Some agencies that do not have real estate or housing as a core part of their mission (school districts, transit operators, etc.) and will resist the requirement to create housing or not prioritize this issue.

	<i>sticking points and areas of negotiation?</i>	
1.6	Resources Needed <i>What costs will be incurred and by whom? Note any funding sources that are readily available, if known.</i>	<p>Education (staff and materials) need to occur for cities, developers and communities to understand laws, applications, best practices, potential partners, and creative paths.</p> <p>A regional housing entity would provide:</p> <ul style="list-style-type: none"> a) Technical assistance to cities b) Knowledge sharing c) Tracking and monitoring, data sharing d) Resources as incentives for local policymaking and capital for infrastructure and affordable housing development <p>A regional housing entity taking on land banking would require significant resources – would need to weigh this investment against others.</p>
1.7	Scale of Impact <i>(as measured by Plan Bay Area goal alignment)</i>	<p>These calculations have not been completed yet and will be done in close consultation with MTC.</p> <p>Preserve: ____ TBD ____ net new units annually through long term affordability covenants or put into nonprofit ownership</p> <p>Produce: 30,000-50,000 net new units of housing by 2040</p> <ul style="list-style-type: none"> [] Above moderate housing (>120% ami): ____TBD____ units [] Middle market housing (81-120% ami): [] Affordable housing (<80% ami): ____ TBD ____ units
1.8	Potential Vehicles for Implementation <i>Check all that apply</i>	<ul style="list-style-type: none"> X Legislation X Regional Funding <input type="checkbox"/> Statewide Funding X Regulatory Reform X Education and Advocacy X Pilots & Spreading Best Practices X Other: regional agency staffing and consultants
1.9	Time Frame <i>Time needed for action to be approved and implemented.</i>	<i>Medium Term – authority, resources and prioritization would take state legislation and funding.</i>
1.10	Feasibility	<p><i>Select one Rationale: Feasibility varies based on activity. Easy</i></p> <ul style="list-style-type: none"> X Medium <input type="checkbox"/> Difficult

Key Element 16: Leverage Publicly Owned Land to Address the Regional Housing Need

There are nearly 700 acres of developable publicly-owned land near transit in the region which could yield between 30,000 and 50,000 new homes. There is also more public land beyond the proximity of transit, but information on such public land is not compiled in any single location and thus, is hard to analyze.

Core Problem: Public land could be available for housing production, but there are numerous barriers slowing down its deployment

Public land offers a unique opportunity to spur housing production because public agencies can be patient land owners with the potential to provide land at below market rates, and may have a mission or motivation to support high shares of affordable housing and labor standards that can ensure employees can afford to live in the Bay Area. These precious parcels also create opportunities for mission-driven developers to build homes that are permanently affordable to our region's low- and very-low income residents without having to compete against more deeply-pocketed private sector actors for the same land. A number of issues hold agencies back from proactively leveraging their land to address the regional housing crisis:

Issue 1: There is no full inventory of Public Land. While MTC has conducted an analysis of developable public land near transit, there is no single clearinghouse for information on public land, making it nearly impossible to pin down the full potential for its development.

Issue 2: There is lack of agreement about use of public land. There is not widespread agreement on the affordability expectations for new housing on public land, nor on the expectations for density of new housing. The wide range of public agencies who own property do not necessarily agree on a minimum share of land to be reserved for affordable housing, nor on the minimum density that should be delivered onsite. From a public agency's perspective, decisions about affordability may require discounting or donating land, which many agencies are hesitant to do as they may be assuming land disposition will generate revenue to support their own public operations, or may not be politically palatable among the elected officials governing the use of land. There may not even be agreement on the use of land for housing across departments within an agency. Alignment on the vision for affordability of units on publicly owned land is needed, as is a strategy for gaining buy-in from these agencies' elected officials, and funding affordable housing.

Issue 3: Land may not be zoned adequately for development today. In situations where public facilities could be more efficiently accommodated to make room for housing development, the design becomes extremely complicated to ensure operability for ongoing public uses, and funding may not exist to support the relocation or redesign of the public facilities. The region's transit agencies are often committed to property development and have the staffing to execute transit-oriented development, but still lack resources for long term facilities planning, parking replacement, relocation of intermodal and other functions, etc. Typically, these costs come out of the end revenue to the agency, reducing the financial motivation to participate in a private development deal. Other agencies may not even know where to begin to develop their properties, and need basic technical support to overcome the overwhelming tasks of facilities development, relocation, and negotiation with a private developer.

Issue 4: The State Surplus Land Act requires agencies to offer land for affordable housing, but many agencies do not understand or comply with the law. California's Surplus Land Act requires public agencies to offer surplus land first and foremost for a number of uses, including affordable housing. The Act requires public entities, when disposing of surplus lands, to give first priority 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 public entity 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. This should ensure that affordable housing developers who often are priced out of the market for land have right of first refusal for public property. However, ambiguity in the law has led to many agencies not willingly complying with this provision as they intended to utilize their property for a different use such as economic development. Successor Agencies to Redevelopment, for example, may face complicated and unique financial circumstances that can affect their interpretation of the Act. Although MTC requires compliance with the Act to be eligible for OBAG funds, there is no public body responsible for monitoring public land, much less enforcing the

Surplus Land Act. It is left therefore to the advocacy community to enforce the Act as resources are available to do so, resulting in lost opportunities for affordable housing. AB 2065 (Ting) would have addressed some of the ambiguity in the Surplus Land Act, but was suspended this legislative session.

Issue 5: Lack of Technical Resources to Implement Sophisticated Land Development Deals. Agencies have a range of interests and needs for their property, and may not have the technical or financial ability to complete the complicated transactions associated with deployment of their properties. While some cities and transit agencies are committed to development on their land, and have requirements for affordable housing, other agencies such as school districts or community colleges may not have a property development team or interest in development. Similarly, state regulations guiding the design of facilities for various public functions (e.g. emergency services, schools) may hinder the reconfiguration of land for housing development.

Issue 6: Not all public land is equally competitive for low income housing tax credits and other affordable housing subsidy. Only a fraction of overall public land is strongly competitive for affordable housing funding programs such as LIHTC or AHSC. Thus while public land as a resource could be a tremendous opportunity for early delivery of affordable housing units, land that is competitive for funding needs to somehow be systemically prioritized and coordinated across fractional ownership. Further, it is worth exploring whether state funding criteria should be modified to expand the pool of public land that can compete for scarce resources.

Core Solution: Reduce barriers to housing development on public land by ensuring land is adequately zoned, coordinating/monitoring regional public land supply, crafting supportive policies, offering technical support, and providing financial resources to support relocation or redesign of public facilities.

Solution #1 (Action Plan #16.1): Modify State Housing Element Law to Require Public Land Identification, and Incentivize its Development with Affordable Housing

- *State requires jurisdictions to prepare a full inventory of sites under their ownership and their present uses:* As part of the Housing Element, jurisdictions would be required to compile an inventory of all sites under their ownership and their present uses. This information would then be reported to their Metropolitan Planning Organizations (MPOs) and Council of Governments (COGs). Require state-owned land to be included in housing elements, with affordability requirements
- *Allow residential uses on all developable publicly-owned sites:* Amend Housing Element Law to establish a presumption that homes may be built on publicly-owned sites and establish a requirement for a written rationale for its exemption, based on strict State-sanctioned standards (to be debated, ranging from health and safety to more complicated standards).
- *Provide cities and counties with 1.5x RHNA site credit for identifying publicly-owned sites for deed-restricted affordable homes:* Incentivize jurisdictions to identify and zone their publicly-owned sites for affordable homes by providing them with 1.5x site credit towards their Regional Housing Needs Allocation for each of their own publicly-owned sites that they identify and zone for the construction of new deed-restricted affordable homes.
- *State allows streamlining for development on publicly-owned sites meeting SB35 affordable housing and labor requirements.* With residential uses allowed on publicly-owned sites, SB35 streamlining provisions could also be applied to development of these sites when they meet the law's requirements or other affordability standards (to be debated).
- *Make public land more competitive for affordable housing funds to incentivize rezoning:* Modifications to LIHTC, AHSC, other program requirements that could expand acreage of public land that is competitive, or exceptions for public land in certain situations, i.e. In specific plan areas/PDAs/others with transformative vision? Build in incentives to programs that encourage housing development on public lands.

Solution #2A (Action Plan #16.2): A Regional Housing Entity Monitors Public Land and Supports Surplus Land Act Enforcement for Affordable Housing

- Obligate agencies through state law to report inventory of public land on a regular basis to COG or regional entity, and what is defined as "surplus." This could be done through the Housing Element strategy defined

above

- Require, through State law, that all public agencies provide their COG or the Regional Housing Entity with 90 days notice prior to selling or leasing any publicly-owned site and ensure that regional entity is staffed well enough to monitor public land, ensure solicitations comply with Surplus Land Act, and implement the act especially its noticing requirements
- Enforcement and reporting could be tied to regional transportation funds, other financial incentives
- For sites not developed with housing (e.g. office development), work with agencies to establish housing impact fees that could support the costs of affordable housing on other public properties or provide funding for housing preservation and/or tenant protection programs within the jurisdiction in question. This could be within an agency, or across agencies through the proposed Regional Entity.

Solution #2B (Action Plan #16.2): A Regional Housing Entity Provides Resources (Technical Assistance and Infrastructure Funding) to Support Development of Public Land with Affordable Housing

- Education on the importance of public land and Surplus Land Act to elevate the issues
- Regional technical support for agencies struggling with disposition strategies, to prepare pre-development studies, development feasibility assessments and RFP/Qs for development of affordable housing on public land sites
- Consider grants to fund long term public facilities plans with emphasis on freeing up land for housing
- Offset the costs associated with reconfiguration of public facilities to accommodate housing development
- Funding incentives for public agencies to offer their land at a discount for affordable housing development
- Regional coordination of use of public land – i.e. encouraging prioritization of competitive lands for affordable housing to have a higher share of affordability, through technical support, education of public agency
- Agency would have financial resources and legal ability to bank land for future development if a public agency is disposing of it
- Agency State’s spatial guidelines for public facilities (e.g. school districts) to evaluate potential for changes that could open up land for housing without compromising the quality of on-site public services³

Solution #3: Incentivize Agencies to Adopt Land Disposition Policies Supporting Growth of Construction Industry Labor Force (to be considered in separate Action Plan)

- State-level incentives (could include streamlining of development approvals, density bonus, and funding) to encourage rezoning of public land, when policies are in place that help expand the trained labor pool available for housing construction
- Funding incentives (i.e. priority consideration for state funding programs such as AHSC and LIHTC) for public agencies with labor requirements for construction of housing on public land, calibrated to ensure affordable housing project feasibility and continued eligibility for state resources.