



June 15, 2016

Oakland City Council  
Community Economic Development Committee  
1 Frank Ogawa Plaza  
Oakland, CA 94612

**Re: Proposed Public Lands Policy**

Dear Councilmembers Reid, Campbell Washington, Gibson McElhaney, and Kaplan:

Public Advocates, the Public Interest Law Project, and Siegel & Yee write on behalf of the following Oakland-based organizations:

ACCE Action, Asian Pacific Environmental Network (APEN), Block by Block Organizing Network, Causa Justa :: Just Cause, Communities for a Better Environment (CBE), Community Rejuvenation Project, East 12<sup>th</sup> Coalition, East Bay Alliance for a Sustainable Economy (EBASE), Eastlake United for Justice, Greenlining Institute, League of Conservation Voters of the East Bay, Movement Generation Justice & Ecology Project, Movement Strategy Center, Oakland Rising, Oakland Tenants Union (OTU), Oakland WORKS, People of Color Sustainable Housing Network, Post Salon Community Assembly, #SupportMalonga Coalition, Sustainable Economies Law Center (SELC), Urban Habitat, Urban Peace Movement, VietUnity, and Wellstone Democratic Renewal Club.

Many of these organizations are currently leading a Week of Action to demand stronger renter protections and more resources for affordable housing.

***We urge you to reject the current public lands policy proposals and to instead work with the community to develop an effective policy that genuinely prioritizes public land for public good. The City should go well beyond the baseline requirements of the state Surplus Land Act to maximize deeply affordable housing on city-owned land.***

One of the most important assets the City has to ensure that existing low-income residents can afford to stay in Oakland is its own land. In the debate about the East 12<sup>th</sup> Street parcel, the community was clear that, in addition to a legal obligation, the City has a moral obligation to prioritize public land for affordable housing for the lowest-income residents.

Therefore, any public lands policy must, *at a minimum*, fully comply with the Surplus Land Act.<sup>1</sup> However, the recommended changes to the Oakland Municipal Code in the May 25<sup>th</sup> staff report to the Community Economic Development (CED) Committee, as well as existing Municipal

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<sup>1</sup> Cal. Gov. Code sections 54220 *et seq.*

Code provisions, conflict with the Surplus Land Act in a number of significant ways, including those described below.

### **1. The Surplus Land Act does not distinguish between “property for development” and “surplus property”**

The Municipal Code continues to distinguish between the “sale of city-owned real property, generally” (Article II) and the “sale or lease of city-owned real property for development” (Article IV).

However, no such distinction exists in the Surplus Land Act. Rather, the Act covers all dispositions of public land that is “no longer necessary for the agency’s use.”<sup>2</sup> If the City is disposing of City-owned land for development, then the land clearly is no longer necessary to the City’s use and is therefore surplus land.

### **2. The Surplus Land Act does not give the City discretion to determine a site’s suitability for affordable housing or other uses**

The proposed revisions to the Municipal Code would allow the City Administrator to “evaluate and make a recommendation to the City Council concerning the suitability of the property for development for affordable housing relative to its suitability for other uses, including commercial uses, market rate residential use, mixed-income residential use, or mixed-use.”<sup>3</sup> Then, if “the City Council determines that the property is most suitable for development for uses other than affordable housing, the NODO shall be sent to developers seeking written proposals for projects with those uses.”<sup>4</sup>

Yet the Surplus Land Act is clear: “Any local agency disposing of surplus land shall send, prior to disposing of that property, a written offer to sell or lease the property ... for the purpose of developing low- and moderate-income housing” to, among others, “housing sponsors,” including affordable housing developers.<sup>5</sup> Developers may independently determine that a particular site is not suitable for affordable housing development, but it is not a determination that the City may make.

Moreover, the City is not permitted to “prohibit or discriminate against any residential development” because it is affordable, rather than market-rate.<sup>6</sup>

### **3. The Surplus Land Act requires a competitive process**

The proposed changes would require a NODO only “for the development of 20 residential units or more....”<sup>7</sup> In addition, the Municipal Code currently allows the City Administrator to “elect

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<sup>2</sup> *Id.* at § 54221(b).

<sup>3</sup> Redline version of Municipal Code § 2.42.170.B.

<sup>4</sup> *Id.* at § 2.42.170.B.3.

<sup>5</sup> Cal. Gov. Code § 54222(a).

<sup>6</sup> *Id.* at § 65008(b).

<sup>7</sup> Redline version of Municipal Code § 2.42.170.B.

to waive the competitive NODO process and negotiate a disposition transaction with a selected developer....”<sup>8</sup>

However, the Act contemplates a competitive process that may not be waived. Specifically, for any sale or lease of surplus land, the Act requires that the City notify housing sponsors and “give first priority to the entity that agrees to” set aside at least 25 percent of the units as affordable to lower-income households.<sup>9</sup> If the City receives more than one such proposal, as it did with East 12<sup>th</sup> Street, it must “give priority to the entity that proposes to provide the greatest number of units ... at the deepest level of affordability.”<sup>10</sup>

Moreover, the Surplus Land Act does not specify a minimum number of residential units before a development is subject to this process.

#### **4. The Surplus Land Act has a minimum inclusionary requirement for *lower-income households***

Staff proposes to amend the Municipal Code to require that any project that includes residential units must set aside at least 15 percent of the units for households that *average* 80 percent of Area Median Income (AMI).<sup>11</sup> This would allow moderate-income units to count towards the set-aside.

However, the Surplus Land Act is clear that at least 15 percent of the units must be affordable *only* to lower-income households,<sup>12</sup> or those earning below 80 percent of AMI – and only if the City “does not agree to price and terms” with a priority entity that would provide a greater percentage of affordable housing.<sup>13</sup>

***Given the scope of the housing crisis that is forcing low-income people of color out of Oakland, 15 percent is not nearly enough to meet the needs of low-income Oakland residents. The City should require much more and do everything it can to achieve 100 percent deeply affordable housing on public land.***

#### **5. The Surplus Land Act does not allow payments in-lieu or waivers of the inclusionary requirement**

Staff’s proposal would allow projects with 200 or fewer units to make in-lieu payments rather than meet the 15 percent requirement.<sup>14</sup> Moreover, staff propose to allow “a full or partial waiver” of the 15 percent requirement based on “a finding or determination that the requirements would render the project infeasible, or that the project will provide an equivalent or greater value of other community benefits in lieu of affordable housing.”<sup>15</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at §§ 54227 and 54222.5.

<sup>10</sup> *Id.* at § 54227.

<sup>11</sup> Redline version of Municipal Code § 2.42.190.B.

<sup>12</sup> Cal. Gov. Code § 54233.

<sup>13</sup> *Id.*

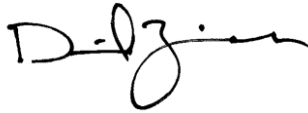
<sup>14</sup> Redline version of Municipal Code § 2.42.190.B.

<sup>15</sup> *Id.* at § 2.42.190.B.

However, the Surplus Land Act requires that any development of at least 10 residential units provide the inclusionary units on site.<sup>16</sup> Waivers and in-lieu fees are not permitted for any projects, regardless of size.

Public land is a crucial tool for combatting displacement and ensuring that Oakland remains diverse and inclusive. The Surplus Land Act describes a baseline set of requirements for cities that dispose of their land. To address the crisis facing low-income residents, particularly residents of color, the City of Oakland should *exceed* the state requirements. Instead, the staff proposals fall very short.

Sincerely yours,



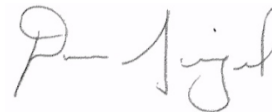
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<sup>16</sup> Cal. Gov. Code § 54233.