

Public Benefit from Publicly Owned Parcels: Advancing Implementation in the Puget Sound Region

By Ahmad Abu-Khalaf and Michael A. Spotts





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INTRODUCTION: IMPORTANCE OF PUBLIC LAND IN THE PUGET SOUND REGION



The need for expanding the supply of affordable housing in the Puget Sound region is increasing. Over the past decade, the region has seen significant population and economic growth, largely due to the influx of tech companies and high-paying jobs. This rapid growth has been constraining the supply of affordable housing in the region's highly competitive housing market. As a result, thousands of households spend more than half of their incomes on housing, and many households face the risk of displacement.

- Between 2005 and 2011, the city of Seattle added 9,467 new jobs with a total of 84,000 projected by the year 2024.¹
- Between 2010 and 2015, the average rent for apartments built in Seattle before 2006 increased by 49 percent.²
- More than 45,000 households in Seattle spend more than half of their incomes on housing, and at least 2,800 individuals are experiencing homelessness.³

To confront these challenges, both public and private sector stakeholders must utilize a range of programs, policies and tools to improve housing affordability and create more vibrant, healthy and opportunity-enriching neighborhoods. A particularly promising approach is the use of publicly owned parcels for affordable housing and other community benefits. In a constrained fiscal environment, these properties can be an asset, regardless of market strength. In strong markets, creative use of public sites can expand opportunities for affordability in an environment in which mission-driven developers struggle to compete for sites against better-funded market rate developers. In struggling markets or neighborhoods, publicly owned parcels offer an important opportunity to catalyze development and seed revitalization activities.

Local and regional leadership has long recognized the importance of this tool for supporting affordability. The city of Seattle's Housing Affordability and Livability Agenda (HALA) identifies vacant and underutilized publicly owned parcels as a public asset that must be utilized for developing affordable housing, especially in key locations near transit and job centers.⁴ King County has a long-standing surplus property policy that provides a "first-look" for affordable housing, and has also created an initiative to build and preserve 700 affordable

¹ "Prosperity Quick Statistics," accessed March 20, 2017, www.seattle.gov/opcd/population-and-demographics/about-seattle#prosperity.

² City of Seattle, "Housing Affordability and Livability Agenda Overview," accessed March 20, 2017, www.seattle.gov/Documents/Departments/HALA/HALA_Overview_web.pdf.

³ City of Seattle, "Housing Seattle: A Roadmap to an Affordable and Livable City - An Action Plan to Address Seattle's Affordability Crisis," accessed March 20, 2017, murray.seattle.gov/wp-content/uploads/2015/09/MayorsActionPlan_Edited_Sept2015.pdf.

⁴ HALA Committee, "Seattle Housing Affordability and Livability Agenda (HALA) - Final Advisory Committee Recommendations To Mayor Edward B. Murray and the Seattle City Council," July 13, 2015, murray.seattle.gov/wp-content/uploads/2015/07/HALA_Report_2015.pdf.

and workforce housing units around transit centers over eight years, including on publicly owned parcels, allocating \$83 million in funds to the construction and preservation of these units.⁵

In November 2016, regional voters approved Sound Transit 3 (ST3) legislation, which requires that at least 80 percent of the agency's surplus land "be offered for either transfer at no cost, sale, or long-term lease first to qualified entities that agree to develop affordable housing on the property, consistent with local land use and zoning laws."⁶ King County, the city of Seattle, the state of Washington and A Regional Coalition for Housing (ARCH), a partnership of King County and East King County cities that aims at preserving and increasing the supply of housing for low- and moderate-income households in the region, have provided funds to seed the Regional Equitable Development Initiative (REDI) fund, which was created by Enterprise Community Loan Fund with the goal of providing low-cost capital for the acquisition of land near transit for affordable housing.⁷ Finally, Enterprise is undertaking the Home and Hope initiative with the support of the city of Seattle and the Gates Foundation to accelerate the production of affordable housing and facility space for educational programs on underutilized public and tax-exempt land.

Since late 2015, Enterprise has also been working with a range of stakeholders on the Public Benefit from Publicly Owned Parcels research initiative, with the generous financial support of the JPMorgan Chase Foundation. The scope of this project was developed in partnership with several public agencies in the Puget Sound region, including the city of Seattle, King County, King County Metro Transit and the Washington State Housing Finance Commission. In June 2017, Enterprise released *Public Benefit from Publicly Owned Parcels: Effective Practices in Affordable Housing Development (Public Benefit)*, a comprehensive national report that reviewed challenges, identified parcel typologies, and offered recommendations at the agency and individual parcel level.⁸

5 King County, "Executive launches initiative to create 700 units of workforce housing around transit centers," September 28, 2015, accessed March 15, 2017, www.kingcounty.gov/elected/executive/constantine/news/release/2015/September/28-transit-oriented-development.aspx.

6 Transit-oriented development strategy system plan, 81 RCW § 81.112.350 (2015).

7 Kriston Capps, "Seattle's Big Transit Buildout, Now With Affordable Housing," CityLab, December 15, 2016, www.citylab.com/equity/2016/12/battling-inequality-seattle-bets-on-transit-oriented-housing/510599/. "Regional Equitable Development Initiative Fund," Community Loan Fund, Enterprise Community Partners, accessed April 13, 2017, www.enterprisecommunity.org/financing-and-development/community-loan-fund/redi-fund.

8 Spotts, Michael A., Genevieve Hale-Case, and Ahmad Abu-Khalaf. *Public Benefit from Publicly Owned Parcels: Effective Practices in Affordable Housing Development*. Washington, DC: Enterprise Community Partners, 2017. www.enterprisecommunity.org/resources/public-benefit-publicly-owned-parcels-19782.

Building on this foundation, Advancing Implementation in the Puget Sound Region is a case study that addresses six challenges identified by regional stakeholders:

1. Supporting mixed-income development on publicly owned parcels.
2. Efficiently and equitably developing large and/or master-planned sites.
3. Establishing effective site control/valuation practices to facilitate affordable housing.
4. Improving internal processes and cross-agency coordination.
5. Improving the efficiency of the solicitation process.
6. Implementing interim uses on sites.

This case study was informed by a series of interviews and events and the experience of staff from Enterprise's Pacific Northwest office. In addition to individual and small-group meetings, the research included two roundtable discussions with local developers in November 2016: one with mission-driven affordable housing developers and another with market rate developers. These discussions were followed by a survey to create an opportunity for participants in Seattle and throughout the country to give more specific and anonymous feedback on how to improve the site development process. Finally, this research is informed by a July 2017 series of events in Seattle on Utilizing Publicly Owned Parcels to Create Affordability, organized by Enterprise and hosted by the Washington State Housing Finance Commission. For more information on all activities and research products associated with this initiative, visit: www.PublicParcelsforHomes.org.

CHALLENGES IN PUBLICLY OWNED PARCEL DEVELOPMENT

The development of publicly owned parcels presents several challenges. Despite offering critical opportunities for the development of affordable housing, there is often a significant disconnect between the goals of public agencies, what the market can build and available public subsidies. Furthermore, it can be challenging to find a satisfactory common ground between the public agency and the developer that addresses both the priorities of generating revenue (for both the agency and developer) and public benefit without jeopardizing the viability of the development. Finally, the development of public sites is an inherently complex process, given standard development challenges (e.g., zoning, approvals, permitting and community engagement), regulatory layers and public subsidy requirements. This section summarizes key elements and considerations that contribute to the success or failure of a publicly owned parcel development effort. A full discussion can be found in the Public Benefit report.

Public agency process and capacity: Effective publicly owned parcel development requires a careful calibration of goals with an understanding of a public agency's pipeline of properties and its capacity to manage it. In addition, publicly owned parcel processes can be made more difficult by institutional processes requiring the support of elected officials or agency board approval. These stakeholders can delay approvals or add requirements that can reduce efficiency (as well as the ability to maximize community benefits) and even jeopardize development viability. Furthermore, the characteristics of individual public sites can vary, which makes using a one-size-fits-all approach difficult and in many cases ineffective. A range of factors can influence the appropriate approach for a given site, including the nature of development surrounding the parcel, existing density, the impact on the surrounding community and the infrastructure needs of the site. (See Public Benefit for a discussion of the different parcel typologies.)

Cross-agency coordination: Public agencies face competing pressures – both internally and from the broader community – when undertaking development projects. The agency may want to accomplish multiple goals, for example, deriving revenue while rebuilding local infrastructure, and community groups and residents may have a range of perspectives on community needs. Furthermore, the need for coordination between the land holding agency and other public agencies, for example, on issues such as zoning and infrastructure, can complicate the process even in circumstances where the primary agencies share a common vision and goals, as regulations and bureaucratic processes must be aligned or reconciled.

Aligning affordable housing resources: Affordability can often be achieved without direct financial subsidy by offsetting the cost of the affordable units with other incentives, such as discounts in site control costs, increased density or reduced fees and infrastructure requirements. There are financial limits to this approach, particularly in areas where land costs make up a lower proportion of total development costs. Therefore, if more affordable units – or deeper levels of affordability – are desired, it may become necessary to provide for direct subsidy, adding another layer of coordination and complexity.

Managing the community engagement process: Community engagement is essential to identifying community needs and shaping the development goals and solicitation process. The correct strategy depends on the capacity of the agency, the targeted development timeline, the scale of the site and its potential impact on the surrounding neighborhood and the presence (or absence) of an overarching neighborhood and community development plan.

Efficiency of the solicitation process: In responding to solicitations for publicly owned parcels, developers often incur significant due diligence expenses to explore a site's viability. It is important for agencies to carefully review their publicly owned parcel solicitations to ensure the selection of an appropriate solicitation structure that is calibrated for their capacity and site development needs, and to set a timeline that conforms with the solicitation's level of detail and requirements. In addition, parcel solicitations often include prescriptive design, construction and site preparation standards that may apply in addition to local building codes and affordable housing design standards applied by the subsidy source. Overlapping standards can add unnecessary architectural and engineering costs to the publicly owned parcel development process and increase compliance costs as developers may need to seek multiple certifications from professionals to prove that the standards have been met.

Adopting appropriate infrastructure requirements: The development of any sizable parcel will likely require a certain level of infrastructure investment by the property owner. During the publicly owned parcel development process, public agencies sometimes seek to obtain off-site and broader community-serving infrastructure as a community benefit. In negotiating these requirements, public agencies should recognize the significant direct costs of such requirements and the opportunity costs, such as a diminished ability to provide other community benefits as part of the development.

Increasing developer interest and competitiveness: Successful public-private partnerships require effective developers and a solicitation framework that encourages robust competition. However, from the developer's perspective, a publicly owned parcel sale may be more complex, time-consuming and expensive than a private market sale, if all else is equal. Even so, publicly owned parcels can have advantages that may compel developer participation, notably discounted site control costs; patient, low- or no-cost holding periods during the predevelopment phase; and/or access to a prime location otherwise unavailable on the market. If any or all of these factors are absent, developers, and financially constrained affordable housing developers, in particular, may choose to focus on privately owned sites. In some circumstances, the terms and conditions of the solicitation itself can inhibit participation by private-sector stakeholders.

Finally, public agencies should consider the impact of parcel size and capacity on the competitiveness of a solicitation. Small parcels may be able to attract a range of small-scale developers, but only if the transaction costs are low enough for financial viability. Multifamily and mixed-use developers may shy away from smaller sites. On the other end of the spectrum, depending on the strength and size of the market, there may be limited or no competition for very large sites or sites with complex challenges; therefore, it may be beneficial to aggregate or subdivide targeted parcels to increase participation based on the context of the site and makeup of the region's developer network.



EFFORTS TO SUPPORT EQUITABLE PUBLICLY OWNED PARCEL DEVELOPMENT IN THE PUGET SOUND REGION

Several public agencies in the Puget Sound region have successfully produced affordable housing through the publicly owned parcel development process.

- In response to a solicitation from Sound Transit, Mercy Housing developed **Mercy Othello Plaza** in Seattle. Completed in spring 2017, this mixed-use development includes 108 units that are affordable to households earning between 30 and 60 percent of the area median income, Mercy Housing Northwest's headquarters and a large community center.⁹ Capital for acquisition and development was provided by the city of Seattle, Low-Income Housing Tax Credits (Housing Credits) and bond financing allocated by the Washington Housing Finance Commission.¹⁰
- The **12th Avenue Arts** mixed-use building was developed by Capitol Hill Housing on the former parking lot of the Seattle Police Department's East Precinct station. Completed in 2014, this development includes 88 units that are affordable to working families and individuals, performing arts space, community space, local retail and secure below-grade parking exclusively for the use of the Seattle Police Department's East Precinct. The subsidy to facilitate affordability came in the form of transferring the site from the city to Capitol Hill Housing at a nominal cash cost, in addition to \$7.6 million in city levy funds, \$2 million from the Washington State Housing Trust Fund and 4 percent Housing Credits.¹¹
- In 2015, the city of Redmond entered an agreement with Providence Health & Services, a nonprofit health organization, to lease a city-owned parcel for 75 years with \$1 annual lease payments and develop it as the **Providence John Gabriel House for Senior Housing**. Completed in 2017, this development includes 74 units affordable for seniors age 62 and older whose household income does not exceed 60 percent of the area median income, and a health and wellness facility that serves the community at large.¹² The subsidy to facilitate affordability came in the form of leasing the city-owned parcel at a nominal cash cost, in addition to public funding from ARCH, King County and an allocation of Housing Credits.¹³

⁹ "Mercy Housing Northwest Real Estate Development – Mercy Othello Plaza," Washington Development Mercy Othello Plaza, Mercy Housing, accessed August 17, 2017, www.mercyhousing.org/washington-development-mercy-othello-plaza.

¹⁰ Marc Stiles, "These Seattle apartments will rent for as low as \$450 a month," Puget Sound Business Journal, February 26, 2016, www.bizjournals.com/seattle/blog/2016/02/these-seattle-apartments-will-rent-for-as-low-as.html.

¹¹ "ULI Case Studies: 12th Avenue Arts," Urban Land Institute, accessed January 1, 2016, casestudies.uli.org/12th-avenue-arts/.

¹² "Providence John Gabriel House," SAGE Architectural Alliance, accessed April 2, 2017, sagearchalliance.com/providence-john-gabriel-house/.

¹³ "Redmond: Providence John Gabriel House," Providence Supportive Housing, accessed April 2, 2017, www.providencesupportivehousing.org/find-a-place-to-live/redmond-providence-john-gabriel-house.

In addition, several important development efforts are in the pipeline.

- In August 2017, Sound Transit and the Seattle Office of Housing jointly issued an RFP offering the **Roosevelt Central Site** for the construction of an equitable transit-oriented development (eTOD) project near a planned light rail line. Sound Transit anticipates pursuing Joint Development in conformance with Federal Transit Administration (FTA) regulations, as the property was purchased with local funds and grant funding from the FTA. The Sound Transit Board approved a process that resulted in the establishment of a minimum price that would allow development of the maximum number of units affordable to households earning up to 60 percent of area median income. In addition, the Seattle Office of Housing is making available up to \$15 million in funding for affordable housing development on the site. Sound Transit is expected to turn over the property for construction in January 2020.¹⁴
- In July 2017, Sound Transit issued an RFP offering the **First Hill Site** for the construction of an eTOD project near a streetcar stop, requiring at least 80 percent of the constructed housing units to be affordable to households earning up to 80 percent of area median income for King County. The RFP allows for the proposal of any price for the 21,600-square-foot property, including a price less than the current fair market value of \$8,640,000, as long as it facilitates a project outcome that best balances providing affordability and maximizing density on the site. The Sound Transit Board is expected to select a development team in fall 2017.¹⁵
- In July 2017, the Seattle Office of Housing issued an RFP for acquiring the city-owned site located at **1312-1326 Yakima Avenue South** to develop resale-restricted, affordable ownership housing that is affordable for and sold to homebuyers earning up to 80 percent of the median family income for the Seattle area, with a minimum resale-restriction period of 50 years. The RFP allows offering the site at no cost or a discounted price, depending on the proposal and the amount of affordability provided. In addition, up to \$900,000 in city funds from the Homebuyer Assistance Program can be utilized to subsidize proposals to serve low-income first-time homebuyers.¹⁶

These activities should be considered in the context of both the proactive policies ([see pages 2-4](#)) and current regulatory constraints faced by the various agencies. Over the course of this research, Enterprise reviewed the agency policies guiding the development of publicly owned parcels that are owned by six public entities in the Puget Sound region to better understand the connection between agency land disposition policies and achieving equitable publicly owned parcel development. For a selection of relevant agency policies, see [Appendix A](#).

¹⁴ Seattle Office of Housing and Sound Transit, *Joint RFP for Equitable Transit Oriented Development Roosevelt Central Site*. Seattle, WA: Seattle Office of Housing and Sound Transit, August 7, 2017.

¹⁵ *Sound Transit, Transit Oriented Development – First Hill Site*. Sound Transit RP 0135-17. Seattle, WA: Sound Transit, July 2017.

¹⁶ Seattle Office of Housing, *Request for Proposals for Resale-Restricted Affordable Homeownership Development at 1312 -1326 Yakima Avenue South*. Seattle, WA: Seattle Office of Housing, July 26, 2017.

The combination of existing policies and development efforts provides a base of knowledge and experience among public agency staff, developers and community representatives in the Puget Sound region. In addition to reviewing existing literature, policy documents and solicitations, the research team spoke with dozens of stakeholders through a variety of forums. Based on these conversations and other observations derived from the Public Benefit research process, several regionally relevant themes emerged:

- There is a significant amount of political and expert support to take more concerted action to better leverage publicly owned parcels and a willingness to dedicate resources to the effort. However, impact could potentially be increased with a greater focus on coordination across agencies and sectors.
- While competition for sites across the region is fierce, affordable housing developers are not yet effectively locked out of the private market. As such, public agencies do not have a “captive” group of potential development partners. Efficient processes with favorable terms are important to ensuring that solicitations yield robust competition from the development community.
- With several large sites in the agencies’ pipeline, coordination of resources for affordable housing, infrastructure and other community benefits will be important.
- The number of sites in the pipeline is likely to outstrip existing affordable housing subsidies. To ensure that equitable development can move forward, the region will need a robust “toolkit” that includes not just existing subsidies, but also creative new financing mechanisms, site control discounts and other incentives to offset the cost of development.

Based on these observations, as well as specific requests from regional stakeholders, this case study includes deeper research on six specific topics. Our recommendations include both near-term opportunities and longer-term options worthy of additional study:

1. Supporting mixed-income development on publicly owned parcels.
2. Efficiently and equitably developing large and/or master-planned sites.
3. Establishing effective site control/valuation practices to facilitate affordable housing.
4. Improving internal processes and cross-agency coordination.
5. Improving the efficiency of the solicitation process.
6. Implementing interim uses on sites.

The following section outlines the issues, opportunities, challenges and recommendations related to these topics. The research team interviewed several practitioners with direct experience working on these topics. Some of these conversations were on background without public attribution to allow more space for candid assessments of policies and challenges. As such, the following pages will include both specific and general/anonymous examples to illustrate specific points.

ISSUE 1: SUPPORTING MIXED-INCOME DEVELOPMENT ON PUBLICLY OWNED PARCELS

Mixed-income development is not intrinsically linked to publicly owned parcel development. However, public agencies can face specific development contexts that lend themselves to mixed-income solutions. Furthermore, an agency with the ability to provide discounted or free site control has an added tool for financing mixed-income development that is often unavailable on the private market.

There is a substantial body of evidence that suggests that mixed-income neighborhoods have community- and household-level benefits. A recent review of literature and policy analysis by the Federal Reserve Bank of Atlanta suggests that such communities promote a number of positive outcomes, including “deconcentration of poverty, reduction in crime, and improved education and health outcomes.”¹⁷ However, it is important to note that the empirical evidence that supports these findings is centered on mixed-income neighborhoods or communities rather than mixed-income buildings. That does not mean that mixed-income buildings are not beneficial. What it means is that developers face unique complexities when attempting to provide a mix of incomes in each building, some of which can threaten both short- and long-term viability of the development (these challenges will be discussed in the following pages). Given the well-established benefits of neighborhood integration, in some contexts it may be beneficial to focus scarce resources and capacity on using publicly owned parcels to further community-level rather than building-level income mixing.

In addition to the aforementioned benefits, there are other context-specific considerations that might lead a public agency to pursue a mixed-income approach.

- For large sites that are “creating” new communities, it may be an opportunity to embed income diversity from the very beginning, rather than trying to break down pre-existing barriers.
- A site may also be large enough that an entirely income-restricted development could inhibit rather than promote integration, particularly in historically disinvested neighborhoods or areas of concentrated poverty.
- Traditional affordable housing subsidies may be insufficient to finance fully affordable development in all circumstances.
- Land holding agencies may be well-placed to offer more flexibility in terms and conditions than private market actors, potentially making it easier to finance mixed-income development, if that is the approach that is most appropriate for a given neighborhood.

¹⁷ Renée Lewis Glover, Ann Carpenter, and Richard Duckworth. *Developing Inclusive Communities: Challenges and Opportunities for Mixed-Income Housing*. Atlanta: Federal Reserve Bank of Atlanta, 2017. www.frbatlanta.org/community-development/publications/discussion-papers/2017/01-developing-inclusive-communities-challenges-and-opportunities-for-mixed-income-housing-2017-06-07.aspx.

Mixed-income models

The term “mixed-income” is broad and captures an intended outcome, but is not specific to a single development or financing technique. There are several approaches to bringing mixed-income housing to fruition, with a wide range of financial structures and intended resident populations.

Inclusionary housing model: The developer produces what is functionally a market rate development that includes a percentage of affordable units. In some markets, this is referred to as “80/20” housing, though the exact proportion may vary. A combination of market rate profits and other incentives, such as density bonuses, expedited permitting and other regulatory relief and fee waivers, are often used to offset the cost of the affordable units. For example, a 2014 analysis found that nearly 500 local jurisdictions have adopted mandatory, voluntary and/or incentive-based inclusionary housing policies.¹⁸

Workforce affordable model: On the other end of the spectrum, developers sometimes reserve a smaller proportion of units in an affordable housing development for higher-income tenants. These developments are generally financed and operated as a fully affordable development, but can include middle-income (60-100 percent AMI) restricted units and/or fully market rate units. In some cases, particularly in the context of preservation, the market rate units in such developments are not oriented toward the top of the market and are often left unrestricted to allow existing over-income tenants to remain or return post-redevelopment. In appreciating markets, these units can have restrictions added after the fact, or increase with the market to provide a broader income-mix and boost revenue. One example of this is the Buccini/Pollin Group’s Market Street Village in Wilmington, Delaware.¹⁹

Housing credit mixed-income model: Housing Credit equity can provide financing for housing that reserves no fewer than 40 percent of units at area median income (AMI) or 20 percent of units at 50 percent of AMI. The amount of housing credit equity that can be received is proportionate to the number of income-restricted units. Therefore, developments that choose to reserve the minimum number of affordable units often rely on large market-to-affordable rent differentials for financial viability. Given the critical mass of both market and affordable units, there must be a blend of financing and property management/operations techniques to serve both populations, for example, Jonathan Rose Companies and Asociación de Puertorriqueños en Marcha (APM)’s Paseo Verde project in Philadelphia.²⁰

18 Robert Hickey, Lisa Sturtevant, and Emily Thaden. *Achieving Lasting Affordability through Inclusionary Housing*. Cambridge: Lincoln Institute of Land Policy, 2014. www.lincolninst.edu/publications/working-papers/achieving-lasting-affordability-through-inclusionary-housing/.

19 R. Devine, “Delaware’s Market Street Village one of six finalists in Jack Kemp Housing Awards,” ULI Philadelphia (blog), July 1, 2016, philadelphia.uli.org/news/delawares-market-street-village-finalists-jack-kemp-housing/.

20 “ULI Case Studies: Paseo Verde,” Urban Land Institute, December 22, 2015, casestudies.uli.org/paseo-verde/.

Separate structure/ownership model: A mixed-income building or site can be achieved by creating multiple essentially separate properties, either in different buildings or through a single-building condominium structure. This model is often implemented through a joint venture, with separate financial packages for each building. For example, the Asian Community Development Corporation and New Boston Fund's One Greenway development in Boston.²¹

Mixed-tenure income-restricted model: Developers can achieve mixed-income development in a 100 percent income-restricted development through a mix of tenures. Some affordable housing subsidy programs permit higher incomes for households receiving homeownership assistance or capital subsidies for homeownership, allowing a developer to combine those units with affordable rental units targeted at lower incomes. This model may eliminate the need to obtain both affordable housing and market rate capital. One example of this is The Roxbury Tenants of Harvard's Mosaic on the Riverway development in Boston.²² However, it is critical that the affordable homeownership model is designed appropriately and follows leading practices. The strong cultural bias in the United States toward homeownership creates the risk of extending the model beyond what is appropriate based on market context and household financial feasibility.

Mixed-tenure cross-subsidy model: Developers can use the proceeds from the sale of a portion of the property to market rate buyers, either through parcel subdivision or a condominium structure, to offset the cost of the affordable housing development. The affordable and market rate components could then proceed as fully independent entities, for example, AHC's The Frederick apartments in Arlington, Virginia.²³

Common considerations

When analyzing whether mixed-income development is appropriate on a publicly owned parcel and which model should be used, there are several major issues to consider.

Matching motivation to approach: It is important to be clear about the goals that the agency and community want to achieve on a given site. A mixed-income strategy is not always the best approach. For example, if the publicly owned parcel is in a higher-income neighborhood with good schools, connectivity and amenities, but with limited or no affordable housing, the most beneficial approach to income integration may be a fully affordable development. If a mixed-income development is desirable, it is important to match the mixed-income development model with the specific goals, market context and financing available.

21 "Affordable Real Estate Overview," Asian Community Development Corporation, accessed August 15, 2017, <https://asiancdc.org/affordable-housing/>. "One Greenway (Parcel 24) Boston, MA," New Boston Fund Inc. Case Study, New Boston Fund, accessed August 15, 2017, www.newbostonfund.com/Real-Estate-Services/Development-Construction-Management/Case-Studies/Parcel-24-MA.asp.

22 "Jack Kemp Excellence in Affordable and Workforce Housing Awards 2017 Winner: Mosaic on the Riverway," Awards & Competitions, Urban Land Institute, accessed July 17, 2017, <https://americas.uli.org/awards/jack-kemp-excellence-affordable-workforce-housing-awards-2017-mosaic-riverway/>.

23 "The Frederick," AHC Inc., accessed August 15, 2017, www.ahcinc.org/portfolio/the-frederick/. "The Frederick at Courthouse," AHC Inc., accessed August 15, 2017, <http://www.ahcinc.org/wp-content/uploads/The-Frederick-2-15-.pdf>.

Obtaining financing for the desired income mix: Most of the above models require some sort of subsidy; therefore, coordination with subsidy providers is critical. In addition to capital subsidies, provisions related to tenant- and project-based vouchers may be necessary to achieve deeper levels of affordability.

Ownership structure: Many mixed-income approaches are best executed through joint ventures or partnerships that allow both market rate and affordable developers to focus on their areas of expertise. A single developer can overcome a capacity gap through contracts or partnerships, for example, an affordable developer hiring an experienced market rate property manager, or a market rate developer partnering with social service agencies on resident services for lower-income households. Ensuring that there is the capacity – in terms of staffing, expertise and capital – to manage both is particularly relevant when the ongoing financial and operational viability of the respective property and unit types are linked. It is also important to consider ownership time horizons and exit strategies. If the affordable housing partner intends to own and manage the property for a longer time period than the market rate partner, there should be an explicit focus on creating a partnership agreement that ensures that the shorter-term interests do not harm the development's long-term viability.

Financing strategy: While all joint ventures and partnerships include a layer of complexity not present in a straightforward market or affordable development, it is even more difficult to finance mixed-income housing – other than the inclusionary and workforce models – as a single development. Investors tend to provide capital to one model or the other, and it can be particularly difficult to identify sources of equity for the market rate portion of the development unless the site is formally subdivided. As a result, such developments may have higher levels of debt, putting more pressure on obtaining higher market rents and maintaining full occupancy. These equity challenges can be exacerbated by the difficulty of obtaining 9 percent housing credits in states such as Washington that emphasize resident services or deeper affordability (see discussion below); 4 percent housing credits are more likely to be available but generate less equity. If equity pricing continues to drop or interest rates rise, these transactions could become even more difficult.

Property management: Affordable and market rate developers often have very different approaches to property management. Many newly constructed market rate buildings face competitive pressure to frequently upgrade units and common space to maintain its place in the market as new competitors come on line. However, a mixed-income development that has fewer market rate, high-profit units is less likely to generate the revenue for these upgrades out of operations. Furthermore, the ability to reserve common areas for resident services for lower-income tenants is limited as such space generally must be made available to the full resident population to maintain marketability. As a result, the developer must either offer a less robust service agenda or arrange off-site services.

Design and construction: Integration is an important element of mixed-income neighborhoods. Carefully designing a fully affordable development that fits into the fabric of a higher-income community can support this goal. Furthermore, effective design practices can be used to visually and functionally integrate two structurally independent buildings, allowing each to proceed with its own financing and operations strategy. Value engineering can also play an important role in reducing the cost of development, which can ease some of the aforementioned financial pressures. However, when designing a mixed-income building it is important that money-saving choices do not inhibit the goal of integration or outwardly identify the affordable units and low-income households.

Recommendations for the Puget Sound region

Mixed-income neighborhoods are what matters. Carefully consider whether the benefits of single-building, mixed-income development outweigh the challenges.

In many cases, the goal of mixed-income neighborhoods can be achieved using joint ventures and/or site subdivision. Particularly on larger sites, it is possible to separate ownership and financing, while still working to achieve “indistinguishable and interspersed” housing options at a range of incomes.²⁴ Extra attention should be paid to design, so that buildings and public spaces encourage integration and interaction. Rather than adopting detailed design specifications, solicitations can establish a broader goal on this subject and allow development teams to respond accordingly.

Consider whether subdivision of a given site is appropriate, creating separate affordable and market rate components.

Subdivision of a site can make it easier to meet a range of goals. For example, an agency that needs to receive some site control payment can balance discounts to facilitate deeper levels of affordability on one site with a “profit maximization strategy” – from both the agency and developer – on the other. The site can be formally subdivided and awarded through separate solicitations, or a single solicitation can seek out joint ventures and partnerships and provide explicit provisions on how sites could be split. The latter approach may be beneficial when shared infrastructure is an option. Furthermore, creating a path for the market rate and affordable components to proceed independently can protect against market shifts that jeopardize one component. If mixed-income on a single site is the preferred approach, it may be beneficial to allow the development team to propose the most efficient path toward the goal of mixed-income housing, rather than pre-determining in the solicitation the specific site elements or mixed-income typology.

²⁴ “Kelly Weiss, “Mueller Redevelopment” (presented at the Large/Master-Planned Sites Workshop, Seattle, WA, July 24, 2017).

Boston's One Greenway, formerly controlled by MBTA, includes three separate buildings – one market rate rental, one affordable rental and one affordable homeownership – over a shared parking podium. Each building proceeded with the most appropriate financial strategy and construction type.²⁵ San Francisco's Office of Community Investment and Infrastructure (OCII) offers Transbay's parcels through a single solicitation for each site, with the market rate developer deeding back podium airspace to the city for subsequent lease to an affordable housing developer.²⁶

Finally, agencies should pay careful attention to project phasing. If the market rate development is to proceed before the affordable development, commitments should be in place to ensure that “not-in-my-backyard” concerns do not derail affordable housing development.

Create a streamlined process for reviews and approvals for joint ventures and partnerships.

Promoting efficiency in a public agency's due diligence efforts – both in selecting a development team and ensuring compliance during the development process – is important in any scenario. Efficiency is particularly critical when considering the additional layer of complexity inherent in joint ventures and partnerships. A formal reporting structure or chain of command should be established to minimize the number of reviews and approvals that are necessary to proceed. If market rate and affordable unit construction is proceeding on different timelines, it is incumbent on the public agency to ensure that each can engage and move forward independently.

Provide site control discounts and direct financial subsidy to achieve deeper affordability.

A lack of equity financing and high levels of debt burden can threaten both the upfront and ongoing feasibility of mixed-income development. Nearly all the developments studied for this research initiative were financially feasible at least in part because of land value discounts (in the context of publicly owned parcels) or redevelopment of parcels that a mission-driven developer had owned for a significant amount of time and had experienced significant increases in market value. These effective subsidies were critical, and agencies should consider using the tool of site control discounts to fill financing gaps based on a detailed review of development financing (for more analysis of site control discounts, [see Issue 3](#)). Agencies can also consider packaging direct financial subsidies with the solicitation to achieve deeper levels of affordability.

Consider changes to Washington state law to better facilitate condominium construction.

Achieving mixed-income development at scale across the region would likely require developers to

25 Janelle Chan, “One Greenway (Formerly PARCEL 24)” (presented at the Mixed-Income Development on Public Parcels Workshop, Seattle, WA, July 28, 2017).

26 Shane Hart, “Transbay, San Francisco” (presented at the Large/Master-Planned Sites Workshop, Seattle, WA, July 26, 2017).

adopt several of the aforementioned models, depending on the context of each individual site and neighborhood. Several developers have incorporated condominiums as a critical part of the development; unfortunately, regional stakeholders have suggested that Washington state laws inhibit the condominium market. A recent analysis by the Sightline Institute echoed these concerns, underscored by the fact that less than 4 percent of all new residential units in the city of Seattle over the last five years have been condominiums, while over 80 percent of units have been apartments.²⁷ As a point of comparison, condominiums represented more than half of Vancouver, British Columbia's housing stock from 2012-2016.²⁸ While part of this discrepancy has to do with differences in Canadian and U.S. tax laws, builder experience and regional market conditions, the Sightline Institute also highlighted that the building standards in the Washington Condominium Act include more exacting standards than for other building types, creating increased litigation risk and insurance costs.²⁹

It is outside the scope of this research to identify specific changes to local or state law on the issue of condominiums, but regional stakeholders should consider the changes that could be made to create a more conducive environment for new condominium construction, without leaving prospective buyers with no recourse for legitimate construction defects. The Sightline Institute analysis suggests capping attorneys' fees, instituting provisions for binding arbitration, establishing a right to repairs only and changing homeowners' association governance provisions.³⁰ To identify potential remedies, regional stakeholders can also investigate legislative activities to address similar issues in the city of Denver and the state of Colorado.³¹

27 Margaret Morales, "Why Seattle Builds Apartments, but Vancouver, BC, Builds Condos," Sightline Institute, August 14, 2017, www.sightline.org/2017/08/14/why-seattle-builds-apartments-but-vancouver-bc-builds-condos/.

28 Ibid.

29 Ibid. Condominiums - Qualified Warranties, Revised Code of Washington, Washington State Legislature, Chapter 64.35 RCW (2004).

30 Margaret Morales, "Why Seattle Builds Apartments, but Vancouver, BC, Builds Condos," Sightline Institute, August 14, 2017, www.sightline.org/2017/08/14/why-seattle-builds-apartments-but-vancouver-bc-builds-condos/.

31 Kieran Nicholson, "Denver council votes 12-1 in favor of condo defects ordinance," The Denver Post, November 23, 2015, http://www.denverpost.com/news/ci_29157220/denver-council-votes-12-1-favor-condo-defects. John Aguilar, "Measure to spur condo construction finally passes, but it's not 'a magic bullet,'" *The Denver Post*, May 4, 2017, www.denverpost.com/2017/05/04/colorado-condo-construction-defects-bill/.

ISSUE 2: EFFICIENTLY AND EQUITABLY DEVELOPING LARGE AND/OR MASTER-PLANNED SITES



Large and master-planned sites create a significant opportunity to advance equitable development by the nature of their sheer scale. For the purpose of this research, there is no specific size threshold that defines this typology, but there are some common characteristics that many large sites exhibit:³²

- Transformation and revitalization are primary goals of the development effort.
- The site has dominant impact relative to surrounding parcels.
- Previous uses may be obsolete, e.g., vacant industrial facilities, and the site may have remediation concerns.
- The site may not have active surrounding uses.
- Sites may need significant infrastructure reconstruction, especially if the publicly owned parcel development deviates from the pre-existing use and/or surrounding neighborhood form.

Developing large or master-planned sites is likely to be a lengthy and complicated endeavor, requiring significant staff capacity, extensive community engagement, robust developer participation and substantial amounts of capital. These sites are great opportunities to provide community benefits, but also come with significant risks.

Common considerations

When undertaking a large or master-planned site development, public agencies, developers and other community stakeholders should consider the following issues.

Determining whether the site should be subdivided, or if the agency should seek a master developer.

The correct approach for developing a given site depends on a range of considerations including parcel characteristics, agency capacity, developer network capacity and the goals for that parcel. Based on an analysis of these and other factors, an agency must decide whether it should seek a developer to undertake the full development, seek a master developer to manage the process of finding other partners for portions of the site or subdivide the site and treat each as a separate development.

³² Michael A. Spotts, Genevieve Hale-Case, and Ahmad Abu-Khalaf. *Public Benefit from Publicly Owned Parcels: Effective Practices in Affordable Housing Development*. Washington, DC: Enterprise Community Partners, 2017. www.enterprisecommunity.org/resources/public-benefit-publicly-owned-parcels-19782.

Shaping the development program in terms of use mix, amenities and resident and community services.

The development of a large or master-planned site requires a highly intensive planning and community engagement process. The goal of this process is to identify the necessary remediation and infrastructure development activities (see below), the financially feasible uses of the site and the needs of the community to define the development program.

Identifying the site's remediation and infrastructure needs, and secure adequate resources to meet those needs.

Larger parcels may have previously hosted industrial uses, thus requiring extensive work to identify environmental and health hazards and remediate the site. Many sites also lack appropriate infrastructure, either because existing infrastructure has deteriorated or because it was designed to serve a different use. Potential upgrades may include new streets and access points, transit infrastructure, new electrical grid capacity and water and sewer systems.

Creating a financial and incentive structure to provide affordable housing options at scale.

The scale of large and master-planned sites requires an exceptionally large amount of capital. The financing needs can overwhelm traditional sources of affordable housing financing, and opportunities for ad hoc public subsidies may be limited if there is also a need for significant infrastructure and/or remediation outlays. Therefore, providing affordability at scale is likely to require a flexible and multifaceted approach, particularly if the development team is to include a full range of affordable housing choices.

Ensuring that social equity is a primary consideration from the outset.

Large and master-planned sites represent a unique opportunity to advance social equity. In many cases, these efforts create new neighborhoods where none previously existed. This relatively blank slate can be used to ensure that the community is socio-economically integrated from the outset, without the same degree of challenges associated with breaking down legacy patterns of segregation and housing discrimination. In addition, rezoning, remediation and public investment related to these sites can lead to significant private wealth creation. This opportunity for expanding the scope for shared – rather than concentrated – economic prosperity should not be wasted.

Addressing planning and design challenges.

It is important to consider how large and master-planned sites connect with the surrounding neighborhoods to ensure that they do not become self-contained islands. In the worst-case scenario, building orientation, including loading dock placement for retail and commercial uses, parking facilities and transportation infrastructure can create barriers that cut off other communities.

Conversely, effective placement allows such uses to serve as buffers between the neighborhood and hazards, such as freeways. In the former case, the risks are akin to urban freeways, in which legacy neighborhoods are harmed as commuters speed past older shopping establishments to newer retail centers and access to other neighborhoods is cut off. Infrastructure plans should focus on connecting to or improving existing street grids with a focus on multimodal transportation options. Development plans should also be cognizant of building-form transition between the public site and surrounding neighborhoods. However, agencies should be cautious about applying overly specific design requirements – particularly at the building level – so as not to limit developer creativity and the ability to create a more organic “sense of place.” Such requirements can also limit a developer’s ability to respond to site-specific challenges.

Recommendations for the Puget Sound region

Undertake a robust planning and community-engagement effort and focus on equity from the outset.

The combination of scale and transformational character of large and master-planned site developments makes the planning and engagement process critical. The publicly owned parcel owner should engage other relevant agencies – the public works and land use planning departments in particular – from the very beginning. Public education and other services must be prepared to respond to any significant increases in density and population. While these changes can be beneficial over time, they require substantial analysis and consultation. If the municipality is not the owner of the parcel in question, that owner must make sure that there is a shared vision with the departments responsible for zoning and granting permits and approvals. Significant consideration should be made for how the neighborhood form and development programming contribute to economic mobility, which influences the solicitation and eventual site ownership structure. Achieving a broad consensus requires a robust community engagement process. Many neighbors may be concerned about the impacts of increased density and traffic, and/or be resistant to changes in neighborhood form. Building trust and sharing timely and accurate process updates can help manage these relationships. Two of the large and master-planned sites studied for this research, Transbay in San Francisco and Mueller in Austin, included robust community engagement efforts, which influenced the eventual approach taken by the respective public agencies. Transbay includes a 35 percent affordability target, and OCII undertook a subdivision approach in response to community concerns regarding design diversity. In Austin, community commitment to the creation of a compact, mixed-use, mixed-income pedestrian oriented community was important in ensuring that the site was not simply sold to developers to create tract homes.

Provide flexible mechanisms for meeting affordability requirements.

A single agency is unlikely to have the financial capacity or full regulatory authority to unilaterally create the range of tools necessary to provide affordable housing options at scale on a large or master-planned site. Addressing the financing gap requires a cross-agency collaboration and both the political and financial will to create the necessary toolkit. Potential tools can include, but are not limited to: inclusionary provisions that rely on cross-subsidy and apply across the site, discounted or free site control for a portion of the site dedicated to affordable housing, fully affordable properties financed with traditional and special-purpose affordable housing subsidies and the reservation of tenant or project-based rental subsidies, such as federal Section 8 funding, to provide deeper levels of affordability. Agencies should also ensure that planning and design specifications encourage, or at a minimum, do not prohibit building typologies and smaller unit sizes that are inherently more affordable.

The Mueller redevelopment is projected to create 5,700 homes at full buildout, 25 percent of which are to be affordable.³³ The city set up a tax-increment financing district to fund brownfield remediation, and is meeting its affordability targets through a combination of techniques, including:

- Inclusionary units in market rate development, with additional offsetting incentives through Austin’s city-wide SMART Housing Program.³⁴
- Housing credit development on parcels owned by the Austin Housing Finance Corporation to achieve deeper levels of affordability.
- Shared equity homeownership, funded in part by a surcharge on the sales price of every residential and commercial property in perpetuity, and a one-time fee paid by homebuilders. The program is managed by the Mueller Foundation, which was specifically set up to help meet the development’s affordability goals.³⁵

Policies and incentives should also be flexible to accommodate development phasing and overall market conditions. Mueller’s unit affordability target allows for a limited amount of fluctuation, as individual developments may proceed at different timelines. In the higher-risk early phases of build out before the neighborhood had become established, the shared equity homeownership agreements stipulated that both the seller and the Mueller Foundation were to receive a pari-passu (equal footing) share of the capital gains upon sale of a property. This gave the income-restricted homeowner more upside to compensate for the risk of being an “early mover.” Once the

33 Kelly Weiss, “Mueller Redevelopment” (presented at the Large/Master-Planned Sites Workshop, Seattle, WA, July 24, 2017).

34 “Development Incentives and Agreements,” Development Incentives and Agreements, AustinTexas.Gov, accessed August 17, 2017, www.austintexas.gov/page/development-incentives-and-agreements.

35 Kelly Weiss, “Mueller Redevelopment” (presented at the Large/Master-Planned Sites Workshop, Seattle, WA, July 24, 2017).

development proceeded and the value of the neighborhoods was established, the shared equity agreement structure was changed to allow the seller to receive 2 percent annual property appreciation, with the balance of capital gains accruing to the Mueller Foundation.

Consider subdividing the site to meet a range of practical and social equity goals.

In many cases, public agencies may have the option of engaging with a single, large-scale, high-capacity developer to undertake a large or master-planned site. This approach may seem like the most straightforward path – using a solicitation process to identify a partner for a one-on-one negotiation related to the specific development program and community benefits. However, there are significant drawbacks with this approach. First, there may not be enough interested and capable developers to produce a robust competition for the site, taking away some of the agency’s leverage. The agency is also exposed to a significant amount of risk if the developer is unable to execute on the agreement (or does so poorly) due to internal factors, external market conditions, or both. Finally, while the development process can create significant property value increases, this approach concentrates the opportunity for wealth generation with a single, well-capitalized entity. While the agency recaptures value through site control payments and community benefits, a more democratic approach can be useful in creating broader social impact.

Agencies should consider subdividing the site as with Transbay, or conveying the site to a master developer for eventual subdivision, as with Mueller. This approach can help build developer network capacity and facilitate participation by smaller-scale and nonprofit developers. Subdivision also allows market rate and affordable development to proceed at the timeline most appropriate to the respective financing and approvals processes. This approach mitigates the risk that failure of one developer derails the entire neighborhood development. In addition, engaging multiple developers can support design diversity, potentially allow for a wider range of development types – as developers with varying expertise may be engaged – and create more natural transitions to the surrounding neighborhoods.³⁶ While these goals can be met through a thoughtful design process undertaken by a single developer, it may happen more organically with multiple developers. Finally, while the agency must work with a larger number of developers, the level of oversight for each specific parcel can be lessened and negotiations for uses of individual sites more straightforward.

Public agencies can still secure a range of community benefits at scale using this approach. They can reserve certain parcels specifically for affordable housing development and/or require that each parcel have a certain percentage of affordable units. They can use fair market value proceeds from the sale of specific parcels for market rate development to subsidize community facilities, infrastructure, affordable housing or other community activities. Transbay is meeting its 35 percent affordability requirement by identifying developers to build higher-density market rate buildings

³⁶ Emily Washington, “Systemic bias against small scale development,” Market Urbanism, October 2, 2015, marketurbanism.com/2015/10/02/systemic-bias-against-small-scale-development/.

(with a 15 percent inclusionary requirement) and using the proceeds from the sale to fund a transit center. The developer must deed back a portion of the parcel for a fully affordable development with deeper income targeting.³⁷

Catellus, the master developer for Mueller, undertakes site preparation and infrastructure work for each site before selling individual parcels. The city retains ownership of the land during infrastructure construction and the master developer is not required to take down all of the land at once, mitigating the cost and risk to the master developer. In some cases, the city's housing finance corporation, which is exempt from property taxes, may take ownership of the land to help lower property tax assessments for Housing Credit developments and achieve deeper levels of affordability or more affordable units. To ensure long-term (40-99 year) affordability, Catellus places a restrictive covenant on all multifamily properties that have an affordable housing requirement.

If using a master development approach, consider mechanisms for mission-driven entities to be lead or master developer.

While the master developer approach widens the network of developers with the necessary capacity to undertake a site, a successful master developer will still accrue a significant amount of the wealth generated by the overall development. This is not necessarily problematic as this developer would be expending capital to address each site and undertaking ongoing risk. Public agencies should consider whether a mission-driven entity, such as a large-scale nonprofit developer or community land trust, is equipped to undertake this task. This would increase the amount of community-serving capital generated by the overall development. To facilitate this structure, the agency may need to hold the parcel, or portions thereof, for a longer period, as with the Mueller development.

Though not directly analogous, the early-stage implementation of the Denver TOD Fund may serve as a partial model for this approach. This fund was set up to preserve properties proximate to existing and planned transit stations. The fund served as a line of credit to the Urban Land Conservancy (ULC), a land trust. ULC would purchase and hold properties until the sites were ready for development or rehabilitation and permanent financing was secured. Permanent affordability requirements would be required as part of the redevelopment effort. In addition to increasing the amount of available capital, the fund offered lending terms tailored to the unique needs of providing equitable TOD in this market.³⁸

If such an approach is feasible in the Puget Sound region, there may also be a need for predevelopment capital and/or technical assistance, depending on the capacity of the entities being considered.

³⁷ Shane Hart, "Transbay, San Francisco" (presented at the Large/Master-Planned Sites Workshop, Seattle, WA, July 26, 2017).

³⁸ John Hersey and Michael A. Spotts. *Promoting Opportunity through Equitable Transit-Oriented Development (eTOD): Barriers to Success and Best Practices for Implementation*. Washington, DC: Enterprise Community Partners, 2015. www.enterprisecommunity.org/resources/promoting-opportunity-through-equitable-transit-oriented-development-etod-barriers.

Consider partnerships with organizations such as land trusts to secure permanent affordability.

Community land trusts and/or other organizations dedicated to permanent affordability can play an important role in a large and master-planned parcel development, even if serving as master developer is not an option. Catellus helped set up the Mueller Foundation as a nonprofit community organization to manage affordability components of the development, including oversight of the inclusionary affordable rental units and managing the shared equity homeownership program.³⁹ San Francisco retains ownership of the air rights to the fully affordable buildings on each site.⁴⁰ A public agency could adopt provisions to ensure that a community land trust or similar organization obtained title to a critical mass of parcels to provide robust affordability. Such an approach can also be considered to create space for a more diverse range of local services, retail, office space and small businesses, with the aim of promoting economic opportunity across the full income spectrum.

Streamline approvals at the individual site or building level.

Large and master-planned sites often undergo an extensive planning process before development. Agencies should leverage the work that goes into this process – community engagement, cross-agency coordination, site assessment – and create a structure that will allow subsequent development to proceed in an expedited manner. An agency can do this by making sure that the solicitation either allows or promotes development that fits into the parameters of existing streamlining programs (as previously mentioned, Mueller’s sites can proceed through Austin’s SMART housing program) or adapt those programs to accommodate the needs of the development. Portland, Oregon, has adopted neighborhood and district plans and environmental impact statements that obviate the need for parcel-by-parcel processes.⁴¹ Finally, OCII’s solicitations for Transbay fit within the parameters of the neighborhood plan, removing the need for additional approvals.⁴²

Proactively address affordability impact on surrounding neighborhoods.

Municipalities and housing agencies with jurisdiction over neighborhoods surrounding large and master-planned site development efforts should analyze the potential affordability impact on those neighborhoods. The net benefits of onsite affordability requirements may be minimized – or even negated – if the number of units is offset with significant price appreciation and higher-end redevelopment in the broader community. Therefore, it is important to engage with the appropriate stakeholders to address and mitigate residential and business displacement. Potential interventions to ensure that catalytic investments benefit the whole community include jurisdiction-wide inclusionary housing policies, preservation programs and financing tools, increased tenant-based assistance and community land trust acquisition of residential, retail and commercial space.

39 Kelly Weiss, “Mueller Redevelopment” (presented at the Large/Master-Planned Sites Workshop, Seattle, WA, July 24, 2017).

40 Shane Hart, “Transbay, San Francisco” (presented at the Large/Master-Planned Sites Workshop, Seattle, WA, July 26, 2017).

41 Kurt Creager, “Portland’s Stewardship of Public Land for Equitable Development” (presented at the Mixed-Income Workshop, Seattle, WA, July 28, 2017).

42 Shane Hart, “Transbay, San Francisco” (presented at the Large/Master-Planned Sites Workshop, Seattle, WA, July 26, 2017).

ISSUE 3: ESTABLISHING EFFECTIVE SITE CONTROL AND VALUATION PRACTICES TO FACILITATE AFFORDABLE HOUSING



Public agencies face multiple competing pressures when undertaking publicly owned parcel development efforts. One of the most important considerations is whether the agency must receive full market value for the use of the publicly owned parcel, and the mechanisms that are available for granting site control. Federal, state and local laws and regulations may limit an agency’s options in some cases; however, in most cases the agency has at least some level of discretion.

In a resource-constrained environment, it is understandable if an agency wants to obtain as much value as possible from its assets; however, if an agency seeks to maximize revenue above all other considerations, a developer’s ability to provide a broad range of community benefits may be inhibited. Failing to account for these benefits – and social equity in general – can have a detrimental impact, both at the micro and macro levels. The micro-level impact depends on the agency in question’s broader goals. In some instances, maximizing upfront revenue can create opportunity costs throughout the life of the development. For example, a transit agency may sacrifice future ridership and farebox revenue if the development exclusively serves higher-end clientele who are less likely to use transit.⁴³

At a macro level, limited resources are stretched to meet a variety of needs within a community or region. If mission-driven developers must receive additional subsidy to pay for site control, or are priced out and must compete for more expensive private sites, the net value of that site control payment is reduced – especially if the funds are coming from the same municipality. Therefore, agencies should look at the full value facilitated by the development to the agency and community, and not just the revenue produced. Discounted and/or flexible site control provisions can provide a valuable subsidy when direct financial subsidies are limited and oversubscribed.

The following sections will offer recommendations to match a variety of contexts, including the following:

- The agency is willing to provide discounted or free site control and regulatory barriers do not apply.
- The agency is willing to provide discounted or free site control but regulatory barriers apply, such as the FTA Fair Share of Revenue standard for Joint Development, the Federal property disposition rules and state, local or agency charter regulations.

⁴³ John Hersey and Michael A. Spotts. *Promoting Opportunity through Equitable Transit-Oriented Development: Making the Case*. Washington, DC: Enterprise Community Partners, 2015. www.enterprisecommunity.org/resources/promoting-opportunity-through-equitable-transit-oriented-development-13262.

- The agency prefers to maximize revenue, but is willing to consider other mechanisms to support affordability such as flexibility in tenure (lease or sale) and timing of site control transfer.

Please see [Appendix B](#) for a full explanation of the different site control valuation and payment practices that apply in different contexts.

Specific recommendations for the Puget Sound region

Allow site control discounting to the greatest extent allowed by law and commensurate to the level of affordability provided.

Public agencies should proactively use site control discounts as a tool to support affordability. This allows some level of affordability on parcels even if other subsidy sources are not available, and can allow for more units and/or deeper affordability when there are subsidies. It can also reduce the inefficiency associated with having one public agency subsidize a developer's payment to another agency.

The level of discount provided should be proportionate to the amount of community benefit provided or other site needs. Publicly owned parcels may require environmental remediation to attain a designation warranting “no further action” sufficient to obtain a building permit. Indeed, the land may have a negative value depending on the level of clean-up required. Public agencies can demonstrate flexibility by recognizing and accommodating these expenses when valuing the land for sale or lease.

A review of development proposals for a site in Boston illustrates the specific trade-offs among affordability, land payments to the public sector and creative aesthetics, among other factors.⁴⁴ Proposals focused on aesthetics offered less for land and/or provided offsite affordable units; proposals promising the most revenue did not focus on affordability; and the proposal offering the most affordable units also offered the city the least revenue, as well as what has been characterized as a “generic design.”⁴⁵ Agencies should be clear about their priorities and cognizant that the full range of solicitation requirements can impact the number of affordable units and level of affordability a site control discount can produce.

⁴⁴ Dante Ramos, “Affordable housing, cool architecture, or something else? Boston has to choose,” *The Boston Globe*, June 26, 2016, www.bostonglobe.com/opinion/editorials/2016/06/25/affordable-housing-cool-architecture-something-else-boston-has-choose/K0UDKcLAKpCtOysqTeyxBI/story.html.

⁴⁵ Ibid.

Use a cross-agency pipeline analysis to prioritize sites for affordable housing.

As indicated in the local agency land distribution policies chart in [Appendix A](#), some agencies have more flexibility than others when it comes to providing site control discounts. A cross-agency analysis of the publicly owned parcel pipeline, community needs and available subsidies can help public agencies prioritize sites accordingly. For example, if there are two sites in the same neighborhood – one with and one without revenue standards – the former can be used for workforce housing that requires a shallower subsidy, while the latter could provide deeper levels of affordability.

Adopt legal restrictions sufficient to price in affordability discounts in calculation of fair market value.

In some cases, an agency will have no choice but to accept fair market value for site control. Market prices are a function of the economic value of the potential use of a parcel. Affordable housing generally reduces the economic potential of a parcel. If there is a legal restriction that requires a site to include affordable housing, the market price should reflect that restriction. Agency policy should reflect this dynamic, adopting policies that are legally binding to the extent that it would be reflected in an appraisal, for example, restrictions that would be recorded and/or statutory regulations. The specific policy levers for achieving this may vary by state and/or local law.

Undertake a collaborative process with the appraiser community to improve the accuracy of appraisals of parcels with affordable housing as an end use.

If such policies are adopted, the region's appraisers would still need to adopt appropriate methods of determining land value in a situation where restrictions are imposed by a public agency on the type of housing that will be allowed to be built and the rent level the owner will be allowed to charge. As affordable housing policies are adopted and evolve, it will likely be necessary to work with the appraisal community to discuss the policies in question, the revenue implications and the appropriate techniques for evaluating a site's value. For a discussion of this issue specific to the ST3 requirements as stipulated in RCW 81.112.350, see [Appendix C](#).

Explore proactive partnerships that would allow more end-user flexibility when acquiring parcels for agency use and/or future development.

Upfront cross-agency coordination around acquisition can create more flexibility when it comes time to develop a parcel. For example, a housing agency can acquire the land necessary for a new transit station or community facility ahead of time, then sell or lease all or a portion to the partner agency for construction and operations. Any residual portions of the parcel and air rights under the housing agency's control could then be developed per its rules, which are likely to be more conducive to affordable housing development. Such activities would likely require some level of coordination around environmental review requirements.

Adopt other counterbalances to compensate for site control costs.

If an agency has no options for providing site control payments, it should seek other ways to support affordable housing development to the extent that is both allowed by regulation and financially feasible for the agency. For example, it can maintain site control until funding, entitlements and permitting is complete, reducing the developer's pre-development costs. The agency can also provide flexibility related to tenure, whether the site is sold or leased, allowing the developer to negotiate the approach that is most conducive to capital availability in that specific context.

Allocate proceeds from fair market value sale to affordable housing.

Another approach an agency can take regarding fair market value is to dedicate all or a portion of the proceeds of such sales to affordable housing on other sites. Such policies should be undertaken carefully – particularly if the agency-owned site is in a high-opportunity neighborhood – to avoid reinforcing long-standing patterns of segregation and ensure funds are used to affirmatively further fair housing.

In 2015, the city of Seattle approved the sale of a parcel at fair market value in the Chinatown-International District to a private developer promising to provide 150 units of affordable housing. The city committed to utilizing the proceeds from the sale to build additional affordable units elsewhere.⁴⁶ The Seattle Office of Housing has also listed for sale two vacant parcels that were assessed as too small to efficiently accommodate affordable housing, with the goal of utilizing the proceeds to finance the production and preservation of affordable housing. The sale of the two parcels is expected to generate over \$1 million, allowing the city to fund the strategic acquisition and preservation of neighboring affordable housing properties such as the Kuniyuki Apartments, which was at risk of losing its affordability restrictions.⁴⁷

Explore policy and legislative options for removing barriers to site control discounts.

The regulatory status quo governing fair market value is not necessarily permanent given the political will and amount of expert focus related to the use of publicly owned parcels for affordable housing. Rules on lobbying and other institutional constraints may prevent the agencies themselves from advocating for legislative changes, but there is an opportunity for the affordable housing and community development field to come together for this purpose. Additional policy analysis would be required to identify the appropriate legislative focus, and the stakeholders would have to consider whether these changes are important than others, such as pushing for increased funding. [Appendix A](#) includes a list of existing publicly owned parcel and fair market value laws and regulations, as well as a list of potential changes that could support more affordable housing development on these sites.

⁴⁶ Marc Stiles, "This private affordable housing project is a Seattle first," *Puget Sound Business Journal*, August 14, 2015, <https://www.bizjournals.com/seattle/blog/2015/08/this-private-affordable-housing-project-is-a.html>.

⁴⁷ "City uses surplus property to support affordable housing," Office of the Mayor, Seattle.gov, last modified December 9, 2016, murray.seattle.gov/city-uses-surplus-property-support-affordable-housing/.

ISSUE 4: IMPROVING INTERNAL PROCESSES AND CROSS-AGENCY COORDINATION

Administrative activities, policies and procedures that guide public agency land development activities and are ostensibly unrelated to affordable housing and community benefits can still have a profound impact on the ability to provide those benefits. Inefficient processes create both direct and opportunity costs that reduce the financial feasibility of an affordable, mixed-income and/or mixed-use development. Even if such units and other community benefits may still be achieved, the number of units and/or depth of affordability provided may be sacrificed. Therefore, it is important for agencies to improve internal bureaucratic processes regardless of the specific aspirations for providing community benefit.

There is a critical mass of interest in the Puget Sound region focused on ensuring that publicly owned parcels catalyze equitable development. Some public agencies and developers have substantial experience with this work; however, a wider range of stakeholders will have to expand their capacity if the region is to develop these parcels at a scale sufficient to make a meaningful contribution to solving the housing affordability crisis.

Each individual agency can and should make internal improvements to their policies and practices. Agencies should also improve coordination in areas where their collaboration is an integral part of the development process. For example, agencies can coordinate funding, land use and/or zoning approvals with the solicitation process. Taking this collaboration a step further, there may be opportunities to leverage existing efforts and boost capacity and/or create formal partnerships to accomplish specific tasks. The following recommendations explore these concepts further.

Specific recommendations for the Puget Sound region

Establish a cross-agency working group or community of practice that meets regularly to discuss challenges, share knowledge and identify areas for further collaboration.

The challenges and solutions to the housing affordability crisis are regional. Ad hoc discussions of these issues are beneficial; however, getting to scale likely requires a greater level of intentional coordination than currently exists. A working group or community of practice, whether stand-alone or through an existing forum, can create the structure necessary for deeper collaboration and allow less experienced stakeholders to learn from their higher-capacity counterparts.

Explore opportunities to establish cross-solicitation policies or memoranda of understanding to decrease the burden of negotiating arrangements for each individual parcel.

Agencies can use the aforementioned collaborative efforts to identify areas for deeper engagement. To illustrate, a transit agency undertaking joint development relies on the zoning, permitting and approvals of the local municipality and potentially on housing agencies and/or public works departments for financing. Agencies should examine these processes to identify whether any elements of the development relationship can be generalized and negotiate any terms, conditions and procedures that would be consistent across solicitations. Agencies can also undertake efforts to integrate public sites into neighborhood planning efforts, leveraging existing community engagement efforts and creating an opportunity to streamline entitlements, permitting and approvals at the site level.

As an example, in 2012, the city of Los Angeles began the process of updating its Consolidated Plan, which is required by the U.S. Department of Housing and Urban Development (HUD). The plan assesses needs and guides the expenditure of certain federal grants passed through to the city. With technical assistance from Enterprise and Abt Associates, the city leveraged this planning effort to improve city processes for addressing transportation, housing and other community needs. As part of this process, a cross-agency “housing cabinet” was created. The housing cabinet recommended a place-based approach, which included neighborhood-level strategies, prioritizing investments that leveraged other public and private resources and aligned with other city initiatives. Robust data analysis and a community participation process guided the approach. To implement this vision, a cross-agency memorandum of understanding that outlined responsibilities for all departments was adopted, a uniform contract for procurement was created and performance standards were made uniform across agencies. A new financing mechanism was also created, capitalized by the city’s HUD Community Development Block Grant allocation.⁴⁸

Agencies can also designate what they consider to be functionally equivalent standards that would be approved automatically without the need to comply with additional provisions or seek waivers. For example, many state allocation policies for housing credits include a list of acceptable green building standards, such as LEED, Enterprise Green Communities and EarthCraft, among others.⁴⁹

48 Patrick Jordan and Amy Brisson. *Implementing a New Vision for Community Development: A Study of Capacity Building and Technical Assistance in Los Angeles*. Columbia, MD: Enterprise Community Partners, 2014. www.enterprisecommunity.org/resources/implementing-new-vision-community-development-19353.

49 Michael A. Spotts. *Giving Due Credit: Balancing Priorities in State Low-Income Housing Tax Credit Allocation Policies*. Washington, DC: Enterprise Community Partners, 2016. www.enterprisecommunity.org/resources/giving-due-credit-balancing-priorities-state-low-income-housing-tax-credit-allocation?ID=0101093.

Improve coordination of regional pipeline to better prioritize sites and coordinate affordable housing resources.

Ad hoc decisions regarding site prioritization can lead to the inefficient allocation of resources. In addition, such decision-making may be met with distrust in the community, which may see arbitrariness or preferential treatment, even if that is not the case. The Puget Sound region's public agencies should build upon recent efforts, taking comprehensive stock of the parcels under their control and gauging the potential of each site. This analysis should include vacant or underutilized parcels and sites with current active uses. As this effort progresses, regional stakeholders can consider whether creating a public pipeline information dissemination platform is a wise use of effort and resources.

Traditional sources of affordable housing capital will likely be insufficient to achieve the region's desired or mandated affordability targets, including the number of units, depth of affordability and length of affordability terms. Therefore, agencies must find other mechanisms for addressing this gap. A robust understanding of the development pipeline is a first step, and can allow agencies to match individual solicitation goals with what can realistically be funded. Funding agencies can also tailor a portion of their funds to better meet the needs of high-priority sites, including attaching allocations to specific solicitations. Having a full understanding of unmet needs can also be helpful as regional stakeholders work to develop additional funding mechanisms to fill the gap.

Adopt the broadest standard possible when determining the suitability of a site for housing.

The Puget Sound region needs a range of housing choices. Too often, analysis of real estate feasibility centers on two models: relatively dense multifamily housing and lower density ownership models, such as single-family homes and townhomes. While an agency may have significant experience managing sites, it may not have the same level of knowledge as experienced and creative developers. Therefore, the agency should not take a restrictive point of view when determining whether a parcel is suitable for development as housing. At a minimum, the agency should make sure that someone with extensive housing development knowledge and experience is involved in making suitability determinations, either as a direct member of the staff or through partnerships or contracts. Another option is to release a non-binding request for information (RFI) on sites that are considered "borderline," tapping into the creativity of the development community. While suitability determinations must take into consideration local land use and planning, these factors should be balanced with the possibility of obtaining the variances and waivers that are frequently granted by some local municipalities to developers. Proactive engagement is important for determining what level of flexibility the local agency is willing to contemplate.

For agencies with limited capacity to undertake development efforts, establish a process for transferring sites or contracting out to a third-party entity, including other more experienced public agencies.

Not every public agency will have the capacity to manage intensive development efforts. In such circumstances, the agency can leverage the experience of its partners in the region. One option is to directly transfer or sell the parcel to another agency, which can be particularly impactful if the receiving agency has affordable housing as part of its core mission. Alternatively, the agency can contract with another agency or consultant to manage the process either on a case-by-case or ongoing basis. This approach can be more efficient than directly hiring staff if the agency has a limited number of parcels that are suitable for development.

Conduct additional research on potential longer-term solutions and innovations that could create scalable impact.

Most of the recommendations included in this case study can be implemented in the short- or mid-term if they are prioritized by the region's public agencies and developers. However, there are additional steps the region could take to significantly increase its capacity to produce affordable housing at scale on publicly owned parcels. The following examples would require a significant amount of due diligence research to determine whether they are both desirable and feasible. While most recommendations are based on successful examples from other regions, additional study would help determine whether they are suitable to the local context and represent the highest and best use of the region's capacity.

- **Create a stand-alone entity to acquire and develop publicly owned parcels.**⁵⁰

The Puget Sound region's governments – or select jurisdictions within the region – could create a stand-alone entity to receive and process developable sites from the various agencies. This would allow the entity's staff to specialize in navigating the complex publicly owned parcel development process. Such an entity could be structured as a public agency, a quasi-public entity (similar to the structure of many housing finance agencies) or a publicly-chartered nonprofit. Another option would be to contract with an existing land trust or nonprofit development entity to serve the same role.

Austin's Mueller Foundation provides an example of a specialized entity set up to manage affordability-related issues for a publicly owned parcel development. Though it does not develop the sites, it does receive dedicated resources to undertake its activities.

⁵⁰ Joshua Janet, "Public Land for Affordable Housing: An Evaluation of a HALA Proposal in Seattle" (Master's diss., University of Washington, 2016).

Denver's Urban Land Conservancy provides another example. In its role as a nonprofit community land trust, it acquires sites from the private market within transit station areas to create permanent affordability, and partners with other organizations to develop the sites. In addition, various land banking entities have been set up across the country to manage real estate portfolios acquired through tax delinquency.

Perhaps the most directly analogous example is the Provincial Rental Housing Corporation in British Columbia, Canada.⁵¹ This is a nonprofit entity that is managed by the public British Columbia Housing Management Commission (BC Housing).⁵² The Corporation “buys, holds and disposes of housing properties.”⁵³ BC Housing also manages the Non-Profit Asset Transfer Program, which leases publicly owned parcels to nonprofits that deliver affordable housing.⁵⁴

- **Create a cross-agency publicly owned parcel development cabinet.**

If establishing a new specialized organization proves too burdensome, agencies could establish agreements to bring development staff from different agencies together to form a development cabinet. The cabinet would be a formal structure to undertake publicly owned parcel developments with the specific task of taking a holistic view of regional needs, capacities and other resources available. To be effective, the cabinet would need adequate funding and an appropriate amount of authority and autonomy to plan, prioritize and fund sites. The difference between this and the previous option is that this entity would not take title to the parcels, but would be responsible for managing the process on behalf of the land holding agency, per their respective rules and restrictions.

- **When acquiring parcels for agency use and/or future development, explore proactive partnerships that would allow more end-user flexibility.**

When acquiring property, planning for future development opportunities can make it easier for public agencies to accomplish their development goals. For example, purchasing additional land during the site assembly process for transit-supportive station area development can potentially pre-empt inflationary market pressures and allow for more cost-effective site control.⁵⁵ As discussed in the recommendation “Explore proactive partnerships ...” above, agencies with the fewest restrictions regarding the end use of publicly owned parcels can undertake the initial acquisition for a range of sites, then enter a site control agreement with the public agency partner for the end use of the site. The

51 Ibid.

52 “Our Organization,” About, BCHousing.Org, accessed April 15, 2017, www.bchousing.org/about/our-organization.

53 “Provincial Rental Housing Corp,” Bloomberg, accessed August 24, 2017, www.bloomberg.com/profiles/companies/5019101Z:CN-provincial-rental-housing-corp.

54 “Non-Profit Asset Transfer Program,” Funding Opportunities for Housing Partners, BC Housing, accessed April 15, 2017, www.bchousing.org/partner-services/funding-opportunities-for-housing-partners/non-profit-asset-transfer-program.

55 Michael A. Spotts and John Hersey. *Promoting Opportunity through Equitable Transit-Oriented Development (eTOD): Barriers to Success and Best Practices for Implementation*. Washington, D.C.: Enterprise Community Partners, 2015, www.enterprisecommunity.org/resources/promoting-opportunity-through-equitable-transit-oriented-development-etod-barriers.

residual portions of the parcel and air rights would remain under control of the acquiring entity and could then be developed per its rules. Housing agencies or public housing authorities could be well-placed to serve this role. Portland Housing Bureau is using local revenue to acquire sites at planned high capacity transit lines in Portland, Oregon, for eventual eTOD development.⁵⁶ This precludes having to navigate the FTA's land disposition and Joint Development processes, removing one layer from the development process.⁵⁷

- **Pursue legislative changes to eliminate barriers to effective development practices.**

Some of the barriers to effective publicly owned parcel development are the result of state and local policy. This research has identified potential opportunities for legislative, regulatory and policy changes to support more equitable development of publicly owned parcels. Potential policy changes include removing restrictions on discounted site control, facilitating more condominium development, and streamlining the publicly owned parcel approval process. For more details, including specific references to state code, see [Appendix A](#). Adopting these changes would not override any applicable federal legal restrictions.



⁵⁶ Kurt Creager, "Portland's Stewardship of Public Land for Equitable Development" (presented at the Mixed-Income Workshop, Seattle, WA, July 28, 2017).

⁵⁷ Ibid.

ISSUE 5: IMPROVING THE EFFICIENCY OF THE INDIVIDUAL SITE SOLICITATION PROCESS

Process efficiency at the agency policy level should contribute to solicitation-level efficiency improvements. Site-by-site solicitations should:

- Encourage robust developer participation.
- Reduce regulatory overlap and bureaucratic inefficiency.
- Prioritize critical community benefits without overburdening the developer.
- Avoid over-prescribing the development program.
- Align resources and incentives for affordable housing and other community benefits.

Translating those principles into practice requires careful attention to the context of a specific parcel and the desired development program. The following recommendations can serve as a guide for improving the quality of site-by-site solicitations, but not all recommendations will be relevant in every situation.

Specific recommendations for the Puget Sound region

Ensure that the standards for developer participation and associated due diligence does not discourage participation.

Public agencies in the Seattle region generally include due diligence requirements and performance assurances in publicly owned parcel solicitations, with the goal of assessing a potential developer's ability to execute on an agreement. These performance assurances, such as net worth and liquidity requirements, may demonstrate a developer's likelihood of accomplishing timely completion of the development on publicly owned parcels. However, public agencies should require performance assurances in a way that does not narrow the pool of potential developers.

Requiring high levels of financial disclosure can discourage market rate developers and investors from participating in publicly owned parcel solicitations. Requiring exceptionally high liquidity levels places an unnecessary burden on mission-driven developers, and sometimes inhibits their participation in publicly owned parcel solicitations, especially in solicitations for large planned parcels that are in prime locations.

In addition, requiring large upfront, pre-acquisition deposits can deter small-to-medium scale developers from responding to publicly owned parcel solicitations, and it may require other public agencies such as housing departments to scramble to provide financing. In the Puget Sound region, mission-driven developers have been required to form partnerships with market rate developers to

meet high liquidity requirements, and accordingly participate in publicly owned parcel solicitations. This creates an unnecessary layer of complexity onto an already challenging process.

There are a number of due diligence requirements and performance assurances that do not place an unnecessary burden on potential developers. Agencies should note that requirements more suited to for-profit developers may be burdensome for nonprofit developers, and vice-versa. Therefore, agencies should consider allowing multiple paths for verifying capacity to allow both sectors to compete. Potential due diligence requirements and performance assurances can include:

- Audited financial statements, particularly for nonprofit developers.
- Evidence and statements regarding past performance, both positive, for example, past developments of a similar nature and the types of financing utilized, and negative, for example debarments, suspensions, bankruptcies, defaults).
- Submittal of term sheets or letters of intent for capital to be used or other written evidence of access to capital.
- A deposit that would be credited to the lease or purchase price. As with any land deal, these include varying degrees of refund terms.
- Deadlines for performance and remediating actions, including provisions to reassume control over property if development effort fails.

In determining the specifics of the above requirements, it is important for public agencies to engage with the market's development and financial community to ascertain what is reasonable in the local context, with the goal of expanding the pool of potential developers.

Consider a pre-qualification process for high-capacity, mission-driven developers.

Site-by-site solicitations can be streamlined if developer capacity is assessed ahead of time. The region's public agencies can release a generalized request for qualifications (RFQ) to mission-driven developers to receive designation as a qualified development entity, which would reduce the agency review and developer compliance burden for each site. This RFQ could either be open-ended or periodically resubmitted to allow new entities to participate if they gain capacity and/or become interested. The Boston Housing Authority (BHA) has undertaken this approach, releasing a 2015 RFQ that was unattached to a specific site, seeking qualified developers to participate in development on BHA sites in "high-market neighborhoods."⁵⁸ Subsequently, BHA has assigned qualified developers to five public housing redevelopments: Amory Street, Bunker Hill, Mary Ellen McCormack, Mildred C. Hailey and Orient Heights.

⁵⁸ Boston Housing Authority, *Request for Qualifications #1160-01: BHA Sites in High-Market Neighborhoods*, BHA Job No. 1160-01, Boston, MA: Boston Housing Authority, 2014. [www.bostonhousing.org/BHA/media/Documents/News/RFQ%20docs%20and%205%20year%20plan/RFQ-1160-01-High-Market-Sites-DISTRIBUTION-\(2\).pdf](http://www.bostonhousing.org/BHA/media/Documents/News/RFQ%20docs%20and%205%20year%20plan/RFQ-1160-01-High-Market-Sites-DISTRIBUTION-(2).pdf)

Mitigate environmental issues and correct title defects.

Publicly owned sites may require environmental remediation to attain a designation warranting “no further action” sufficient to obtain a building permit. Indeed, the land may have a negative value depending on the expense of the clean-up required. As previously mentioned, public agencies should recognize these expenses when valuing the site. They can be more effective partners if they are willing to accept the cost of remediation directly through cash outlays before transfer of title, or indirectly through discounting of the lease or purchase price. Easements, encroachments and other title defects are often encountered when dealing with infill sites and are costly and timely to correct, so they are best addressed by public asset managers, if not accommodated in the purchase price as appropriate.

Identify financing gaps for infrastructure, affordable housing and other community benefits and “right-size” the solicitation requirements to available resources.

Public agencies face competing pressures – both internally and from the broader community – when undertaking development projects. The agency may want to accomplish multiple goals, for example, deriving revenue while rebuilding local infrastructure, and community groups and residents may have a range of perspectives on community needs.

Public agencies therefore often include multiple and sometimes competing requirements in publicly owned parcel solicitations, including but not limited to receipt of fair market value of land, specific design characteristics, affordable housing requirements, local hiring, infrastructure development and redevelopment, neighborhood amenities and other community-based benefits. While each of these elements can bring value to a municipality and/or community if structured properly, there are often associated trade-offs related to time, complexity and cost. Calibrated carefully, requirements can balance efficiency and community benefit; however, failure to consider cumulative impact can diminish a developer’s ability to maximize the impact of any single goal and, in some cases, inhibit development viability.

Public agencies can enhance the efficiency of the publicly owned parcel solicitation process by prioritizing a discrete set of goals and objectives, based on an assessment of the unique characteristics of the site the most pressing needs within the community, the development potential of the site and the amount, terms and conditions of both public and private financing available. At a minimum, participants in this research project emphasized the importance of upfront clarity in the solicitation process – and maintaining consistency with those standards throughout the process – which allows developers to plan accordingly in an efficient manner.

Once a robust analysis of needs and resources is complete, the land holding agency should consider a range of direct and indirect provisions to facilitate development, many of which have been addressed in previous sections.

- Provide free or discounted site control where allowed and appropriate.
- Consider holding property during full pre-development phase.
- When targeting an affordability level beyond what can be achieved through cross-subsidy, attach affordable housing resources to the solicitation.
- If additional subsidy must be raised, ensure alignment between solicitation and affordable housing resource regulations and timelines.

Some coordination with affordable housing subsidy providers is necessary to ensure that there are sufficient resources available to meet affordability goals at the targeted income levels. Furthermore, it is important to consider whether other onsite requirements, such as parking, open space, community facilities, create financing gaps and conform to the rules and requirements of the subsidy programs, such as total development or per-unit cost caps as specified in Housing Credit allocation policies.

Avoid applying design standards above and beyond the local jurisdiction's rules and approvals.

In roundtable discussions with local developers from the Puget Sound region, market rate and mission-driven developers expressed that prescriptive design, construction and site preparation standards in publicly owned parcel solicitations often place an unnecessary burden and can have a profound impact on development feasibility. Prescriptive design, construction and site preparation standards, which may overlap with existing local standards and other agencies requirements, can add unnecessary architectural and engineering costs to publicly owned parcel development and increase compliance costs as developers may need to seek multiple certifications from professionals to prove that the standards have been met. In addition, prescriptive design and site standards can have an impact on the ability to achieve desired affordability and community development goals.

Public agencies should assess the cumulative impact of a solicitation's requirements on development feasibility and affordability goals, and take steps to avoid overlap in codes and design standards. Given the extensive design review processes in place in most jurisdictions, the best approach is likely to leave design requirements to that process. Minimalist overlays can be applied to ensure that certain site-specific goals are met, for example, public access to an adjacent transit station, and agencies can participate in the existing design processes to ensure their needs are met.

Furthermore, program requirements that prescribe the amount and type of retail space can increase the complexity of financing developments on publicly owned parcels and impact development feasibility, especially in neighborhoods with weak demand for larger retail spaces. In addition, requiring larger retail spaces in affordable housing and mixed-income developments can complicate the process of acquiring funding and add challenges related to cost, such as creating loading areas and additional parking lots. When retail is an important community priority, agencies should be flexible in how such requirements are applied. During the national research process, developers testified to the occupancy challenges that arise when there was a mismatch between the mandatory retail design guidelines and the needs of potential retail tenants. Agencies can mitigate these challenges in part by assisting in the identification of potential tenants early in the planning process and by considering site subdivision to allow the housing and commercial portions of the development to proceed independently.

These factors underscore the importance of effective community engagement. Neighbors and other interested stakeholders should be explicitly aware of trade-offs, allowing for a more informed conversation of priorities.

Establish a clear and efficient chain of command during the pre-development and development phases.

Friction between agency oversight and expediency can occur once the development process begins. Development plans and specifications can evolve for various reasons, such as responding to community needs, changes in financing terms and unforeseen soil and/or geological conditions, among other factors. While the agency justifiably wants to ensure that agreed upon goals are being met, damaging costs and delays may result if approvals and waivers are not granted in an expedient manner. Solicitation and development oversight structures should create a clear and efficient process for navigating these challenges.

ISSUE 6: IMPLEMENTING INTERIM USES ON SITES

Public agencies can produce community benefits from sites that are not in line for development in the near term by promoting interim uses. Permitting and/or proactively encouraging interim uses can be particularly useful for vacant sites to ensure that these assets are productive and do not become a source of blight in a community. Interim uses can provide a clear public benefit, such as providing temporary shelter for homeless households and individuals, community gardens and open space. However, utilizing publicly owned parcels for interim uses can create challenges related to cost and securing capital, time and effort, public opposition and coordinating with interim use operators and community stakeholders.

Common considerations

When considering interim use of vacant publicly owned parcels, public agencies, developers and other community stakeholders should consider the following issues.

Permitting, funding and insurance challenges: Some interim uses may create the same financial and legal challenges associated with permanent redevelopment, including a lengthy permitting process, acquiring sufficient capital and purchasing insurance coverage. Therefore, public agencies and community stakeholders must ensure that the desired public benefits justify the allocation of funding and time to interim use of publicly owned parcels to avoid wasted effort and resources.

Identifying the required site preparation to facilitate an interim use: An interim use may still require extensive site preparation work, including but not limited to connecting utilities, environmental remediation, site grading and demolition and/or rehabilitation of existing structures. The costs associated with such activities may preclude these sites, unless the agency will have to undertake these activities for eventual development regardless.

Facing local opposition: Public agencies must coordinate with local communities in planning interim uses to identify local needs and avoid public opposition. Establishing some interim uses, such as temporary shelters on publicly owned parcels, can create public concerns that will need to be addressed through coordination and public engagement.

Planning for future removal and relocation: Once certain uses are established, their removal may be controversial and require provisions for relocation. Clearly established criteria for eventual reuse and development of the property may help mitigate the controversy, but in many cases neighborhood residents attach great importance to amenities that may include community open space, gardens and food cart pods. For example, proponents of a long-standing flea market at a

junior high school parking lot in Washington, D.C., allied with project opponents to oppose a reduction in the market's size that was to accompany the redevelopment of the site. Furthermore, geographically relocating housing serving homeless households can lead to further disruptions in their lives and must be approached with sensitivity and care.

Specific recommendations for the Puget Sound region

Create an inventory of vacant and underutilized publicly owned parcels that are suitable for interim use.

As addressed in previous recommendations, a detailed understanding of the publicly owned parcel inventory and development pipeline is critical for identifying eventual uses of the sites, including interim uses. Optimal sites are generally far enough back in the queue to allow their interim use to operate long enough to justify the upfront investment.

Use a limited number of properties that are not the focus of immediate development activities to address the region's homelessness crisis.

Public agencies should proactively examine plans and regulations to identify the best sites for use as temporary shelter for homeless individuals and households. Ideal sites include those that are proximate and/or accessible to service providers.

The number of unsheltered homeless individuals in the Puget Sound region has been increasing over the past five years. According to the 2016 One Night Count, 4,505 individuals were living outside and unsheltered in King County – a 19 percent increase from the 2015 count.⁵⁹ The city of Seattle has already undertaken efforts to develop tiny-home villages for unsheltered homeless individuals and households on city-owned parcels, including the Georgetown Village site, which provides 40 tiny homes for unsheltered homeless families, as well as counseling offices and onsite services. Georgetown Village was developed by the Low Income Housing Institute (LIHI), and is self-managed by a community of homeless individuals.⁶⁰

Public agencies can also utilize local expertise for developing innovative, prefabricated homes that can be easily relocated and repurposed. Compass Housing Alliance (CHA), in partnership with OneBuild, is currently developing an innovative, steel-frame modular housing community (Compass Crossing) in Seattle's Columbia City neighborhood. These homes are cost, time and resource efficient, and can be easily relocated and adapted to other vacant and under-utilized parcels.⁶¹ Utilizing publicly owned parcels that are not in line for development in the near term, or

59 "2016 Annual Report," One Night Count, Seattle/King County Coalition on Homelessness, www.homelessinfo.org/what_we_do/one_night_count/2016_results.php.

60 Sarah Anne Lloyd, "New tiny houses crop up in the Nickelsville Georgetown village," *Curbed Seattle*, June 12, 2017, seattle.curbed.com/2017/6/12/15776206/tiny-houses-nickelsville-georgetown-homeless.

61 "Compass Crossing Pilot Project," Compass Housing Alliance, accessed March 20, 2017, www.compasshousingalliance.org/what-we-do-top/compass-crossing/.

that have been deemed unsuitable for development for tiny-home villages and modular housing communities, can provide innovative, rapid and scalable solutions that help address the region's homelessness challenges.⁶²

Agencies can also proactively support efforts to overcome regulatory-related design barriers. For example, the Homes for Hope program in Los Angeles promotes design innovations to produce inexpensive, code-compliant homes to help address their region's homelessness challenges. Created as a final design project at the University of Southern California's Homeless Studio, students worked with city planners and advocates to develop modular, tiny home-style units that do not violate building restrictions. These units are moveable and stackable and could hypothetically be used to provide temporary shelters on vacant public sites.⁶³

Allow "incidental uses" on other sites, where appropriate.

Public agencies should consider allowing incidental use of a vacant publicly owned parcel, which is the limited authorized use of a publicly owned parcel that does not interfere with the desired development goals and future use of the property. Incidental uses generally do not include permanent or semi-permanent structures. However, these uses can create a substantial positive impact on an existing neighborhood, such as temporary gardens, farmers markets, mobile libraries, health clinics, food truck venues and public art and community spaces that can activate sites and create public benefit. Furthermore, in weaker markets, incidental uses can provide an opportunity to address challenges related to vacancy and abandonment. For example, the Grounded in Philly initiative facilitates utilizing vacant publicly owned parcels for community-controlled green spaces, gardens and gathering places. The initiative provides an online mapping tool that helps people engaged in community gardening and farming to identify vacant parcels available for transition.⁶⁴ In addition, these incidental uses may create fewer challenges related to resources and effort for the agency, as they rely on external partners to undertake any activities. Atlanta's TransFormation Alliance and Metropolitan Atlanta Rapid Transit Authority (MARTA) have partnered with WonderRoot, a local nonprofit, to support public art as a place-making activity in station areas.⁶⁵

Incidental uses are designed to maximize the potential of a site without diverting agency capacity from more time-sensitive tasks. Agencies should focus on sites where activation would have a substantial positive impact on an existing neighborhood, or continued vacancy has a particularly detrimental impact on an existing neighborhood. However, some sites may have regulatory restrictions governing even incidental use, which can impact the suitability of a given site.

62 "Compass Crossing Pilot Project," Compass Housing Alliance, accessed March 20, 2017, www.compasshousingalliance.org/what-we-do-top/compass-crossing/.

63 Barbara Eldredge, "Clever \$25K tiny homes were designed to skirt zoning restrictions," *Curbed*, February 2, 2017, www.curbed.com/2017/2/2/14479794/tiny-homes-prefab-homeless-los-angeles.

64 "Home," Grounded in Philly, accessed August 17, 2017, groundedinphilly.org/.

65 "En Route," Public Art, WonderRoot, accessed September 3, 2017, www.wonderroot.org/public-programs/public-art/en-route/.

Public agencies can facilitate incidental uses with a relatively passive approach. The agency can conduct initial general planning that would apply across the portfolio, including the establishment of criteria for allowance of incidental use. For instance, these criteria can be related to neighborhood circumstances, proposed use, liability and eventual reuse and development. The agency could then publicize these standards and allow the broader community to nominate sites and suggest uses on a rolling basis or during a defined period of time.

Plan for the future removal or relocation of interim uses.

Longer-term interim and incidental uses can still become important parts of the community; therefore, it is important to proactively consider the next step for any use once the site reaches the permanent development process. This can include gradual phase outs or small grants for relocation. The success or failure of an interim use can also influence the development program for the publicly owned parcel, for example, temporary retail may seed the market for permanent retail on the site, or a well-managed homeless service provision could theoretically allay neighborhood concerns, allowing an agency to push for deeper levels of affordability as a permanent use.

CONCLUSION

While the Puget Sound region's housing affordability challenges are significant, there is a critical mass of experience, capacity and will in both the public and private sectors available to address these problems. Continued commitment and increased efficiency are necessary to overcome challenges to preserving and creating affordable housing in the region, as numerous complexities and competing pressures can chip away at the value that such efforts can create.

The opportunities that publicly owned parcels present are not infinite or indefinite. To make the best use of these sites, it is important that the region's public agencies scale up their efforts to coordinate and ensure that effective policies and adequate resources are in place to facilitate more equitable development.



APPENDIX A

Summary of potential legislative changes and existing policies

Potential policy changes or clarifications

This research has identified potential opportunities for legislative, regulatory and policy changes to support more equitable development of publicly owned parcels. It was outside the scope of this project to conduct thorough analysis and due diligence on the specifics necessary for advancing such policy changes; therefore, the following opportunities should be considered “areas for additional research/analysis” rather than specific recommendations.

- Changes to Washington Condominium Act (Chapter 64.35 RCW: Condominiums - Qualified Warranties) to better facilitate condominium construction as part of publicly owned parcel development.⁶⁶
- Changes to RCW 79.11.005 to allow for the sale of state-owned surplus property below fair market value for affordable housing.⁶⁷
- Changes RCW 81.112.080 or clarifications to policy interpretation to better enable Sound Transit to strategically purchase parcels for development in excess of immediate needs for right-of-way, stations and construction staging.⁶⁸
- Changes to Seattle City Light Department’s Real Property Use Guidelines to allow for revenue flexibility in the sale or lease of land for affordable housing.
- Changes to the city of Seattle’s disposition policies that currently require elected officials (city council members or mayor) approval of final publicly owned parcel development agreements to transfer that responsibility to agency staff. This could make the development process more consistent and give the agency more flexibility to align solicitations with the development and subsidy provision timelines.

Existing policies

Agency	Land Disposition Policy	General Process	Revenue Requirements	Affordability Requirements
State of Washington ⁶⁹	Yes	The Revised Code of Washington (RCW) allows for the sale of any real property not designated or acquired as state forestlands and no longer or not necessary for public use.	The sale of surplus state land may be made after public notice to the highest bidder for such a price as approved by the governor, yet not less than the fair market value of the real property plus the value of improvements.	None

⁶⁶ Condominiums – Qualified Warranties, Revised Code of Washington, Washington State Legislature, Chapter 64.35 (2004).

⁶⁷ State Land Sales, Revised Code of Washington, Washington State Legislature, Chapter 79.11 (2003).

⁶⁸ Additional Powers – Acquisition of Facilities – Disposal of Property – Rates, Tolls, Fares, Charges, Revised Code of Washington, Washington State Legislature, RCW 81.112.080(2) (1992).

⁶⁹ State Land Sales, Revised Code of Washington, Washington State Legislature, Chapter 79.11 (2003).

Existing policies (continued)

Agency	Land Disposition Policy	General Process	Revenue Requirements	Affordability Requirements
King County ⁷⁰	Yes	The county has a Surplus Property Program for Affordable Housing, through which all county property deemed surplus by the facilities management division and not needed for the provision of essential government services is reviewed for suitability for residential development, with a portion of the resulting units reserved for affordable housing. The facilities management division considers a property suitable for residential development if the property is in an Urban Growth Area and zoned residential, and housing is compatible with the neighborhood.	The King County Surplus Property Program allows the county to dispose surplus property that is suitable for affordable housing development at a discounted price.	Rental and for-sale housing that is affordable to very low-income households (earning below 50 percent of the median income), low-income households (earning between 50 and 80 percent of the median income) or moderate-income households (earning between 80 and 115 percent of the median income).
Snohomish County ⁷¹	Yes	The county code requires each county department to submit an annual list of surplus properties to the property management division. The property administrator shall review and make recommendation to the county council for the disposal of surplus property for affordable housing development.	The county code allows for the disposal of surplus property for the development of affordable housing at a discounted price.	Rental and for-sale housing that is affordable to very low-income households (earning below 50 percent of the median income), low-income households (earning between 50 and 80 percent of the median income) or moderate-income households (earning between 80 and 115 percent of the median income).
Sound Transit ⁷²	Yes	As required by the Revised Code of Washington (RCW), when Sound Transit disposes or transfers any surplus property, the agency provides the first offer of sale or lease of at least 80 percent of its surplus property at no cost or discounted sale or long-term lease to qualified entities, such as housing authorities, nonprofit developers and local governments) for the development of affordable housing.	The Revised Code of Washington (RCW) allows Sound Transit to provide first offer of sale of its surplus property at no cost or discounted sale or long-term lease to a qualified entity	At least 80 percent of the housing units developed on surplus property must be affordable to households earning less than 80 percent of the county median income (adjusted for household size).
City of Seattle ⁷³	Yes	The city of Seattle organizes its real estate transaction policies under three categories: executive order policies, which are enacted by the mayor and do not require city council approval; departmental directives issued by the finance and administrative services department; and city council-adopted policies. City-owned property deemed surplus, excess or underutilized by a city department initiates an internal and external review process (on a case by case basis) managed by Real Estate Services. City council-adopted policies for property deemed surplus or excess to the needs of all city departments are drafted by Real Estate Services, and reviewed by the Real Estate Oversight Committee and the Law Department. If recommended, these policies must be sent to the city council for review and approval through an ordinance or resolution. Real Estate Services can recommend using the excess property in support of affordable housing.		
Seattle City Light ⁷⁴	Yes	The Real Property Use Guidelines state that it is unfeasible to build housing on Seattle City Light owned and operated property that is not deemed excess or surplus. However, Seattle City Light circulates complete descriptions of surplus property under study to all other city departments to provide them with first priority to acquire its surplus property. Furthermore, Seattle City Light holds community outreach for surplus property with the goal of providing an opportunity for public input on the proposed disposition of surplus land. Upon the completion of community outreach and following the consideration of any non-utility proposals, Seattle City Light submits a report to the city council, including public comments and suggestions, recommendations for disposition of surplus property and the necessary legislation to implement the recommendations.	Seattle City Light disposal of surplus property is in accordance with federal, state and local laws and to obtain a fair market value for the disposition.	None

70 Title 4 Revenue and Financial Regulation, King County Code, King County Council, Chapter 4 (2017).

71 Amending Chapter 4.46 of the Snohomish County Code Permitting the Use of Surplus Property for Affordable Housing, Snohomish County Council, Snohomish County, Washington, Ordinance No. 99-051 (1995).

72 Sound Transit 3. *Appendix D: Social, Economic and Environmental Impacts; Integration with Regional Land Use; Transit-Oriented Development*. Seattle: Sound Transit Board, 2016. st32.blob.core.windows.net/media/Default/Document%20Library%20Featured/8-22-16/ST3_Appendix-D_2016_web.pdf.

73 Joshua Janet, "Public Land for Affordable Housing: An Evaluation of a HALA Proposal in Seattle" (Master's diss., University of Washington, 2016).

74 City Light Department, *Real Property Use Guidelines*, Appendix 8.3, Seattle, WA: City of Seattle, 1996.

APPENDIX B

Utilization of FTA-funded property for affordable housing development – regulations regarding sale or use of site

Disclaimer: The following information is based on the Enterprise Community Partners Policy team's interpretation of FTA regulations and has not been vetted or officially endorsed by the FTA.

Public agencies face difficult challenges when developing sites under their control. In addition to weighing competing priorities, they must navigate a regulatory and contractual framework that crosses multiple layers of government and various funding sources. One of the most critical considerations is the approach by which the agency conveys site control to the eventual developer, whether through lease or sale. Often, overlapping and sometimes conflicting rules governing the terms of site conveyance apply.

This appendix focuses on transit agencies and departments of transportation, as some hold a large amount of legacy properties and/or may be preparing for site acquisition associated with new transit development. In determining the most efficient path for utilization of transit agency-owned properties, Federal Transit Administration (FTA) grantees must adhere to a set of regulations that are designed to protect the federal interest in a given property.

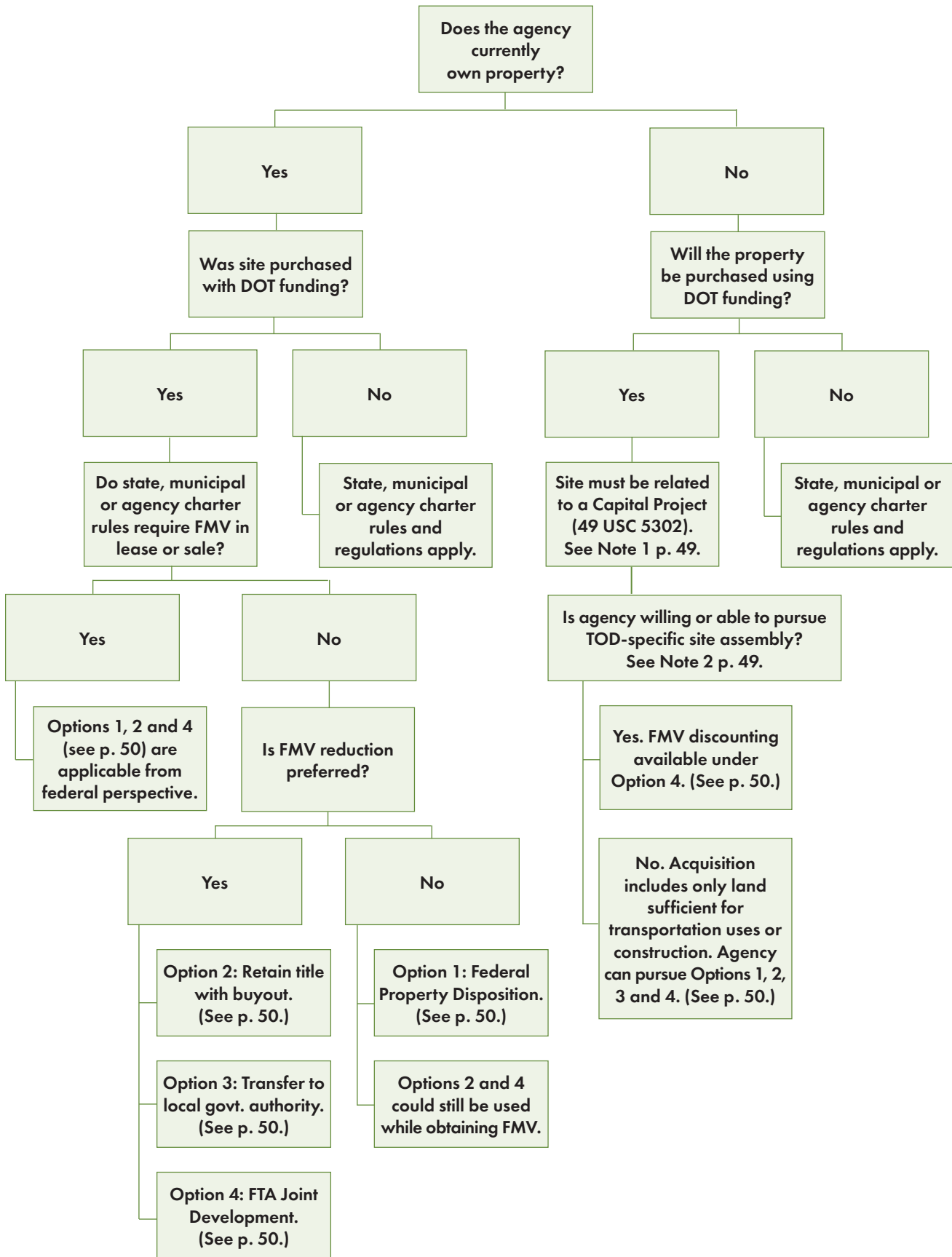
The federal interest⁷⁵ applies when the project for which the property was purchased receives FTA funding, in full or in part. State and local restrictions governing the use and sale of publicly owned properties may also apply. In general, the most restrictive of the FTA, state and local rules applies as it pertains to regulations regarding sale or lease terms.

FTA grantees have several paths for disposing of or developing property with a federal interest. The most appropriate path depends on the regulatory conditions that apply in that specific context and the goals of the transit agency for a given development. Three considerations are particularly relevant, in no particular order:

- Agencies must decide whether they prefer to sell or lease the site.
- Agencies must decide whether to seek maximum revenue from the sale or lease of the site, or to provide property at discounted rates to facilitate affordable housing or other community benefits.
- Agencies purchasing property must decide whether they intend to acquire property of sufficient size to maximize choices related to real estate development, or just the minimum required for transit facility construction and operation.

The following page features a graphic that provides more detail on the choices that transit agencies must make, with information on the federal regulatory provisions related to site acquisition and sales and lease terms that would apply in different contexts (other regulatory provisions would also apply). The subsequent section describes those regulatory provisions in more detail.

⁷⁵ The federal interest in a property applies proportionally (i.e., if the land was purchased as part of a build out of a new corridor, and 20 percent of the project was funded by federal dollars, the applicable federal interest for any land purchased as part of that project would be 20 percent).



Discussion of applicable policies

Note 1: The specific parcel being acquired must be related to a Capital Project, as defined under 49 USC 5302.⁷⁶ FTA/DOT funding can go toward the site that will eventually host a public transportation facility and the land necessary to facilitate construction, including temporary uses, and continued operations.

Note 2: The FTA definition of Capital Project explicitly includes Joint Development, allowing funds to be used for site acquisition for this purpose. One type of Joint Development is real estate development that meets a number of standards, including “Provid(ing) a public transportation benefit by either: (a) enhancing the effectiveness of a public transportation project and relating physically or functionally to the public transportation project, or (b) establishing new or enhanced coordination between public transportation and other transportation.” A mixed-use development that attracts users of and brings additional ridership and revenue to the transit network would meet this standard. This means that sites can be acquired for the Joint Development itself, not just the actual public transportation facility. If the agency proactively chooses this approach and complies with all statutory and regulatory provisions, it has the option of purchasing additional land beyond what is necessary for constructing the actual transportation project. For example, if the land necessary for staging construction is insufficiently large to support transportation-supportive real estate development, the agency may acquire an adjacent parcel as long as the resulting development qualifies as a Joint Development. For more information, reference the Federal Transit Administration Guidance on Joint Development – FTA Circular 7050.1A.⁷⁷

Furthermore, when applying for funding under the FTA’s Capital Investment Grant program (49 USC 5309),⁷⁸ such activities could qualify as “enrichments,” and the incremental cost associated with the Joint Development would not be counted against the applicant’s rating of “Cost Effectiveness.” For more information and analysis on the Capital Investment Grant rating criteria, read: Enterprise’s Policy Focus Issue Brief – New Starts: Leveraging the New Transit Policy Guidance to Create Inclusive Communities of Opportunity.⁷⁹

⁷⁶ Definitions, 49 U.S. Code § 5302.

⁷⁷ Federal Transit Administration, *Federal Transit Administration Guidance on Joint Development*, FTA C 7050.1A, Washington, DC: U.S. Department of Transportation (DOT), 2016.

⁷⁸ Fixed guideway capital investment grants, 49 U.S. Code § 5309. Office of Planning & Environment, *Capital Investment Program Regulations & Guidance*, Washington, DC: Federal Transit Administration, 2016.

⁷⁹ Michael A. Spotts. *New Starts: Leveraging the New Transit Policy Guidance to Create Inclusive Communities of Opportunity*. Washington, D.C.: Enterprise Community Partners, 2013. <http://www.enterprisecommunity.org/resources/new-starts-leveraging-new-transit-policy-guidance-create-inclusive-communities>.

Option 1 – Property disposition: The simplest means of opening up FTA-funded, agency-owned land for development is property disposition. If a property is deemed to be surplus (in this context, without having an ongoing transportation purpose), it must be sold through the property disposition process, which requires the receipt of fair market value. The transit agency would liquidate the federal interest by remitting payment to FTA, and the balance of proceeds is retained by the transit agency. At this point, FTA restrictions no longer apply to the property. Lease structures are not an option with this approach. For more information, see FTA Circular 5010.IE: Award Management Requirements (Chapter IV) and 49 U.S.C., 5334(h)(1)–(h)(3).⁸⁰

Option 2 – Retain title with buyout: This option is similar to property disposition but without requiring the outright sale of property at fair market value. The transit agency could liquidate the federal interest by remitting payment to FTA using its own assets. The federal interest would likely need to be based on a current assessment of fair market value. At this point, FTA restrictions no longer apply to the property, and the transit agency could negotiate agreements for development at discounted sale or lease terms in support of affordable housing. For more information, see FTA Circular 5010.IE: Award Management Requirements (Chapter IV) and 49 U.S.C., 5334(h)(1)–(h)(3).⁸¹

Option 3 – Transfer of assets to local government authority: A transit agency can transfer property to a local governmental authority for a public purpose at no cost and with no reimbursement to FTA. Certain terms and conditions apply, including the requirement that the overall benefit accruing to the government through the transfer must be greater than the federal interest. However, FTA regulations note that this transfer is subject to a “competitive process, and there is no guarantee that a particular agency will be awarded” the property. For more information, see FTA Circular 5010.IE: Award Management Requirements (Chapter IV) and 49 U.S.C., 5334(h)(1)–(h)(3).⁸²

Option 4 – Joint Development: Transit agency-owned land does not need to be deemed surplus to be developed. Under FTA regulations, joint development is a transportation purpose that frees the agency from having to sell the property outright, but also carries additional regulations. Among other rules, sale or lease terms and conditions must conform to FTA’s “fair share of revenue” standard, which is distinct from “fair market value.”

⁸⁰ Federal Transit Administration, *Award Management Requirements*, FTA C 5010.IE, Washington, DC: U.S. Department of Transportation (DOT), 2017. Administrative provisions, 49 U.S. Code § 5334 (h)(1)–(h)(3).

⁸¹ Ibid.

⁸² Ibid.

- Fair share of revenue: This amount is equal to the original federal investment in the property, without adjustment for inflation or increases in property value. This allows for discounting of the sale or lease costs below fair market value.
- Exceptions to fair share of revenue rule: The amount of revenue generated and received by the project sponsor may be lower for community service, publicly operated projects or affordable housing, which allows sale or lease costs to be based on the actual revenue generated by the project. The amount of revenue received must be based on the amount of revenue generated by the development. For example, a supportive housing development serving formerly homeless individuals may be eligible for a deeper reduction in the fair share standard than a mixed-income development focused on moderate-income households, depending on the capital structure and cash flow of the respective properties.

Full regulatory information can be found in FTA Circular 7050.1a: Federal Transit Administration Guidance on Joint Development.⁸³ For more information on FTA Joint Development, visit the program webpage at: www.transit.dot.gov/jointdevelopment. Resources include official program guidance and other documents, as well as a recording, presentation and transcript from the agency's February 9, 2017, Joint Development webinar, which explicitly addresses the affordable housing exception to the fair share of revenue rule.

⁸³ Federal Transit Administration, Federal Transit Administration Guidance on Joint Development, FTA C 7050.1A, Washington, DC: U.S. Department of Transportation (DOT), 2016.

APPENDIX C

Sample appraisal instructions for Sound Transit surplus property suitable as development for housing

By Joel Rubenzahl, Community Economics

Property description

The land in question is owned by Sound Transit, a public agency operating in the city of Seattle. The property is proposed to be used for rental housing and is required by RCW 81.112.350 to restrict 80 percent of the units as affordable for households earning no more than 80 percent of Adjusted Median Income. The remaining 20 percent of the units can be made available at market rates. In addition, the property will likely support some first-floor commercial space that will be rented to businesses serving the local community. The property is zoned for multifamily housing.

Assumptions

We seek to know the market value of the project assuming the following conditions:

- 1) Units will serve a range of family sizes from 1 to 3 bedrooms;
- 2) The number of units will be at or near the maximum allowed under the zoning;
- 3) Rent levels will be at market for 20 percent of the units and at 1/12 of 30 percent of 80 percent of Adjusted Median Income for assumed household sizes of 1.5 persons per bedroom, less a utility allowance as scheduled by the King County Housing Authority;
- 4) First-floor commercial space will be rented at market rents.

Determination of land value

Land value will be determined using two methods. One method will be based on recent transactions of comparative sales of similarly situated vacant land. The other will be a residual analysis based on the difference between the cost of producing the desired development and the value of that development upon completion.

Comparative sales

The appraiser will identify similar properties that have sold recently on a square footage and per unit cost. This will provide a value of the subject property assuming no use restrictions. Then, maximum gross rents will be determined at market and compared to allowed rents under the imposed restrictions. The difference in allowed rents will then be capitalized to determine the reduction in the land value associated with the restrictions.

Residual analysis

The appraiser will determine the cost of development of the theoretical project that is to be constructed on the project site. Allowed rents and expected operating costs will be applied to determine the value of the theoretical project. The value of the project in excess of the cost of development will be the residual value of the land.



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