

Public Benefit from Publicly Owned Parcels: Effective Practices in Affordable Housing Development

By Michael A. Spotts, Genevieve Hale-Case and
Ahmad Abu-Khalaf





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ACKNOWLEDGEMENTS

This research was made possible through the generous support of the JPMorgan Chase Foundation. We also appreciate the contributions of dozens of practitioners who were interviewed, attended roundtable discussions and/or participated in surveys as part of the research process. Finally, we would like to thank the city of Seattle, King County (Washington), King County Metro Transit and the Washington State Housing Finance Commission for their support in offering insight and shaping this research project.

Additional thanks are due to the following people for their contributions and assistance:

Sherri Alms	Kelly Gonzalez	Marty Koistra	Lisa Sturtevant
Emily Alvarado	Hillary Hamilton	JoAnne LaTuchie	Arthur Sullivan
Maria Barrientos	John Hersey	Julia Levitt	Lisa Vatske
Becky Bicknell	Betsy Hunter	Brian Lloyd	Steve Walker
Erik Blank	Thatcher Imboden	Sarah Lovell	Jeremy Wilkening
Mark Ellerbrook	Joel Ing	Laurie Olson	Maiko Winkler-Chin
Joe Ferguson	Monica Joe	Bob Peterson	Mariia Zimmerman
Lincoln Ferris	Jared Jonson	Gary Prince	Rich Zwicker
Chris Fiori	Rand Juliano	Miriam Roskin	
Sibyl Glassby	Rebekah King	Daniel Schned	

Finally, we would like to acknowledge our Enterprise colleagues who contributed to this paper:

Susan Anderson	Nicole Gudzowsky	Odetta Macleish-White	Geeta Rao
Melissa Bondi	Andrew Jakabovics	James Madden	Victoria Rowe-Barreca
Shaun-Dae Clark	M.A. Leonard	Suzanne Probst	Bill Wright
Elizabeth Ginsburg			

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EXECUTIVE SUMMARY

Communities across the country are facing a range of challenges to ensuring access to safe, decent and affordable homes, particularly for low- and moderate-income households. 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 through the use of publicly owned parcels for affordable housing and other community benefits. In a constrained financial 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.

While publicly owned parcels are assets for creating community benefits, there are significant challenges associated with the planning, solicitation and development process. Developers working on public sites generally must overcome the same challenges that are inherent in multifamily, mixed-use and/or affordable housing development, which can add time, cost and complexity to the development process. These challenges for publicly owned parcels are often exacerbated by the real and perceived differences between the goals and strategies of the public and private sector.

Publicly owned parcel development can take many forms and is impacted by a range of factors, including but not limited to:

- Federal, state and/or local regulations governing the use and disposition of public sites
- Site characteristics such as size, shape and topography
- Existing infrastructure (or the lack thereof)
- Current zoning and use restrictions, and the likelihood of potential changes to code
- The use, form and scale of the surrounding parcels and neighborhood

These and other factors influence the development possibilities on a given site, the range of potential community benefits and the approach taken by the public agency.

Despite complexities, there are successful examples of publicly owned parcel development throughout the country. Public agencies can and do establish overall policies and site-by-site processes that effectively balance agency needs with community goals. The following recommendations are based both on real-world experiences and ideas for process improvements from practitioners experienced in the publicly owned parcel development process. A full list of recommendations can be found in Appendix D.

Adopting Agency Policies

Public agencies can establish leadership in improving process efficiency and providing affordable housing by adopting overarching goals and policies appropriate to the relevant portfolio, community need and resources available. These “table-setting” plans and activities can streamline the process for developing individual solicitations and provide greater certainty and clarity to the developer community.

- Pipeline and process management: An initial step is for an agency to take stock of the publicly owned parcels under its control, creating a full inventory. This effort should be complemented by robust engagement with the community and other agencies to determine community needs and opportunities across the portfolio. It should then prioritize sites accordingly, considering the capacity of staff to undertake development projects. Policies and procedures for developing individual sites should minimize cross-agency overlap and bureaucratic inefficiencies and be designed to encourage robust developer participation.
- Providing community benefits: Public agencies should conduct a continuous, clear and transparent communication process to identify community needs and opportunities for using publicly owned parcels to meet those needs. This should include engaging with existing planning efforts, exploring options for co-location with community facilities, establishing goals and mechanisms to support affordable housing and working across agencies to ensure that there are adequate resources to fund affordable housing and other community benefits.

Site-Based Principles and Recommendations for Efficient and Equitable Development

Even the most effective public agency policies must be translated into individual site-based efforts to be successful. The combination of efficient agency-wide and solicitation-specific policies can encourage developer participation and competition and increase the likelihood that publicly owned parcel developments could realize substantial community benefits. There are several broad principles that cut across site typology:

- Ensure that each given site has a clearly defined and reasonable set of goals and priorities based on an analysis of site characteristics, community and infrastructure needs, and the trade-offs between various competing priorities.
- Create a clear chain of command for decision-making, designating a single lead agency where possible. Efforts should be made to avoid regulatory overlap or duplication and to facilitate an efficient approval process.
- Be judicious in application of infrastructure requirements, with a particular focus on parking requirements.
- Consider subdividing larger sites if agency capacity or the developer network is limited and/or to encourage competition.
- Consider partnerships to secure permanent affordability.
- Create back-up plans in the event of market disruptions.
- Proactively address affordability impact on surrounding neighborhoods.

In applying the above principles, public agencies must consider the characteristics of the individual site. The optimal approach will vary widely depending on scale, existing use, surrounding uses and neighborhood form and infrastructure needs, among other factors. Just as there is no one-size-fits-all approach to agency policies, individual solicitations should be tailored to the unique site characteristics and community needs. The following recommendations pertain to the specific needs of common site typologies.

- **Typology 1:** Small sites. These sites have often been acquired through tax delinquency or represent extraneous square footage adjacent to other uses. Active surrounding uses may be present, but vacancy or abandonment may be creating problems. Though such publicly owned parcels may not justify intensive agency staff effort for any single site, there are opportunities for site aggregation or packaging parcels in a single solicitation. Agencies should work to reduce complexity and transaction costs, and proactively use sites as an opportunity to expand and/or diversify the developer network. Small sites also create an opportunity for demonstration projects to provide alternative housing types.
- **Typology 2:** Suburban sites. These sites often involve the redevelopment of park-and-ride facilities or aging auto-oriented shopping centers. As such, they sometimes constitute a significant divergence from existing and surrounding development forms, creating an opportunity to reduce automobile dependency if the parking and infrastructure planning process can be carefully managed. This necessitates a particularly robust approach to community engagement and the integration of the site – and its residents – into the

surrounding community. Redevelopment of suburban sites also represents an opportunity to fill gaps in community needs, particularly related to services that may be absent in lower-density communities.

- **Typology 3:** Infill sites. These sites can vary in scale but are mostly located in established communities. Supportive infrastructure exists but may need upgrades, and while the development may be catalytic, it would not necessarily constitute a fundamental transformation of neighborhood form. Efforts should be made to coordinate with pre-existing plans and/or conduct pre-solicitation engagement to identify and focus on gaps in community needs. Given that the surrounding community may be built out, it may be important to maximize site potential and co-locate multiple facilities and uses. Relevant agencies – including but not limited to the property owner – should focus attention on addressing the potential impacts of gentrification on neighborhood residents and businesses.
- **Typology 4:** Large/master-planned sites. Transformation and/or revitalization is often a primary goal for these sites, which may take the form of vacant industrial neighborhoods/facilities. Infrastructure necessary to support new development may be absent, and there may be significant environmental remediation concerns. Development may have a dominant impact on the community relative to surrounding parcels, which necessitates a focus on site integration and the impact of development on existing residents and businesses. The scale of the site may create both challenges and opportunities. It is critical that social equity considerations play a critical role from the outset of the planning process. There will likely need to be a range of mechanisms and tools to ensure that housing affordability is a part of development plans. Public agencies should consider site subdivision to engage with a broader range of developers capable of contributing to the site redevelopment.

In today's current environment of resource scarcity, publicly owned parcels represent a rare opportunity to provide a range of benefits to both the agency and the broader community. However, efficiency is critical to delivering on this promise, as the numerous complexities and competing pressures associated with the process can chip away at the value that such efforts can create. This opportunity is not infinite or indefinite. While some agencies occasionally acquire new parcels, land is a discrete resource for others. To make the most of these sites, it is critical that careful thought and prioritization be given to their use, with a distinct focus on social equity.

For a full outline of recommendations, see Appendix D.

INTRODUCTION: PUBLICLY OWNED PARCEL CHALLENGES AND OPPORTUNITIES

Communities across the country are facing a range of challenges to ensuring access to safe, decent and affordable homes, particularly for low- and moderate-income households. Cost-burden levels among U.S. households are above historical norms, particularly among renter households.ⁱ Many cities are experiencing increased housing demand in urban neighborhoods, which can drive up property values and housing costs. Yet these challenges are not limited to hot markets or high-demand neighborhoods in weaker markets. Insufficient wage growth has contributed to the increase in cost burden in strong and weak markets alike, and concentration of poverty and neighborhood disinvestment remains a significant challenge for many households.¹

Defining “Publicly Owned Parcels”

For the purposes of this report, a publicly owned parcel is any site that is owned by a governmental or government-chartered entity. Such entities can include (but are not limited to): units of state or local government, government departments (including housing and public works), transit agencies, school districts and public institutions of higher learning.

Publicly owned parcels, often referred to as “public sites,” “public land” and “surplus land,” can include but are not limited to: vacant or underutilized parcels, parcels with existing community/public facilities with redevelopment potential, and/or land being purchased by a public agency for the development of community/public facilities.

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 financial environment, these properties can be an asset to both the agency and the broader community, 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.

Each public site comes with its own set of opportunities and constraints requiring varied and creative approaches to development. Land owners, developers and public finance systems need to both increase their capacity and form new partnerships for the development of larger and more complex sites. Similarly, smaller sites offer opportunities for creative partnerships with neighboring landowners and community groups and can provide an opportunity for innovative design solutions.

While publicly owned parcels can be an asset for creating community benefits, there are significant challenges associated with the planning, solicitation and development

i According to the Harvard Joint Center for Housing Studies, the number of cost-burdened renter households reached an all-time high of 21.3 million in 2015, 11.4 million of whom are severely cost burdened. Harvard Joint Center For Housing Studies, *The State of the Nation's Housing 2016* (Cambridge, MA: Harvard Joint Center for Housing Studies, June 22, 2016), www.jchs.harvard.edu/research/state_nations_housing;

Andrew Jakobovics, Allison Charette, Christopher Herbert, Daniel McCue, and Ellen Tracy Marya, *Projecting Trends in Severely Cost-Burdened Renters* (Columbia, MD: Enterprise Community Partners and Harvard Joint Center for Housing Studies, September 2015), www.enterprisecommunity.com/resources/ResourceDetails?ID=0100886.

Barriers to the Efficient Development of Affordable Housing

In 2014, Enterprise and the Urban Land Institute's Terwilliger Center for Housing released "Bending the Cost Curve: Solutions to Expand the Supply of Affordable Rentals." This report highlighted the numerous barriers to efficient and effective development and preservation efforts, including but not limited to:

- Regulatory barriers and financial constraints that limit economies of scale
- Requirements to utilize specific design characteristics and/or construction techniques, or restrictions/limitations on innovative practices
- A fragmented financing system that can increase soft costs and delays
- Onerous processes for entitlements, permitting and approvals
- Sometimes contentious community engagement processes that often empower opponents of multifamily and affordable rental housing ³

process. First, developers working on public sites generally have to overcome the same challenges that are inherent in multifamily, mixed-use and/or affordable housing development, which can add time, cost and complexity to the development process (see sidebar).²

These challenges are often exacerbated by the real and perceived differences between the goals and strategies of the public and private sector. In the public/private partnerships required to develop publicly owned parcels, these differences can easily translate into barriers to efficient and effective site development. In addition, a site's status as a public asset often adds additional levels of scrutiny and regulatory complexity to a development, particularly when the public agency working to develop the site is separate from the agency with land use, zoning and building code authority. Overcoming these challenges will be important for ensuring that both public agencies and the community benefit from this opportunity. To that end, this report will identify leading practices and recommendations to:

- Adopt general policies that balance agency goals, community benefits and efficient real estate development practices.
- Streamline the process for developing, responding to and evaluating solicitations for publicly owned parcels.
- Support efficient inter-jurisdictional and cross-sectoral collaboration.
- Facilitate a robust yet efficient community outreach and engagement process.
- Align affordable housing resources with the solicitation process.
- Broaden the pool of developers responding to solicitations with affordability requirements.

BACKGROUND AND METHODOLOGY

This research is part of Enterprise's Expanding the Supply of Affordable Homes program, which provides research and implementation support to improve housing affordability through financial innovations, regulatory optimization and development/preservation cost-effectiveness. This program also includes a workplan that goes beyond research and supports implementation with the inclusion of a set of market-based engagements to supplement local capacity. The scope of this research initiative was developed in partnership with several public agencies in the Seattle region, including the city of Seattle, King County, King County Metro Transit and the Washington State Housing Finance Commission. This effort also builds upon past research by Enterprise and its partners published in, "Promoting Opportunity through Equitable Transit-Oriented Development (eTOD)"⁴ and "Bending the Cost Curve," to improve the efficiency of the affordable housing delivery system.⁵ This report was also informed by previous research on developing publicly owned parcels conducted by the Coalition for Smarter Growth and the Urban Land Institute – Washington, D.C.⁶

In fall 2014, Enterprise Community Partners began researching national examples of publicly owned parcel development, including interviews with practitioners, reviews of past research on the subject and reviews of publicly owned parcel solicitation documents. We compiled and reviewed 60 public solicitation documents from across the country, including Atlanta, Boston, New York, Phoenix, San Francisco, Seattle and Washington, D.C. At least half of the reviewed solicitation documents included affordable housing requirements, and most of the solicited parcels are in developed, urbanized areas with medium to high densities and existing infrastructure. We compared site locations, cost, lot size, timeline, partnerships, revenue requirements, affordable housing requirements, zoning, community process and other factors to determine a list of project typologies.

Additionally, we conducted a case study on publicly owned parcel development efforts in the Seattle region. As part of this process, we discussed project pipelines with the public agencies for whom this report is being prepared to determine the most helpful typologies to research. The case study (released separately) was informed by the experience of staff from Enterprise's Pacific Northwest office who work in the Seattle region as well as outreach to practitioners.

That outreach included two roundtable discussions with local developers in November 2016: one with mission-driven affordable housing developers and another with market-rate developers. The objective of the discussions was to gain perspective on the publicly owned parcel disposition process from those who have experience responding to such solicitations. We followed these discussions with 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. While the number of survey responses was not sufficient to provide a statistically meaningful analysis, these responses provide useful context for this research.

THE IMPORTANCE OF PUBLICLY OWNED PARCELS

Public agencies can derive significant benefits from redeveloping the vacant and/or underutilized sites under their control. Vacant sites have direct costs (basic upkeep and security) as well as significant opportunity costs, in the form of foregone property taxes and the potential harms that vacancy can create for a community.⁷ More productive use of these parcels can help meet community needs for public facilities and amenities. Development can also represent a useful source of revenue. These funds can be critical, especially when shifts in political leadership and/or economic conditions threaten agency/municipal finances.

The productive utilization of publicly owned parcels can and should benefit the broader public as well. Public agencies may utilize surplus property to achieve short-term benefits, such as upfront sale revenues. However, by focusing on the short-term benefits of the disposition of a publicly owned parcel, public agencies may neglect a wide range of longer-term community benefits and create a different set of opportunity costs. For example, “highest-bidder” sales in cities experiencing intense development pressures from a growing population and booming economy may sacrifice prime sites for affordable housing, contributing to unmet housing needs and/or higher subsidies to acquire alternative private market sites.

In struggling markets, land redevelopment can catalyze revitalization. However, the resulting neighborhood improvements risk increasing cost burden for and at worst contributing to the displacement of low- and moderate-income households if social equity is not incorporated into the plans from the beginning. A narrow focus on maximizing upfront revenue can also create opportunity costs that impact the agency’s core priorities. For example, transit agencies may seek to maximize ridership and create alternatives to car travel. Ridership data suggests that lower-income households are more likely to utilize transit service.⁸ If a transit agency’s site development terms and conditions are costly enough that only high-end development is feasible, these ridership and congestion management goals may suffer.

To facilitate a more holistic approach, public agencies should use the land development and disposition process as an opportunity to engage with their communities. Exploring uses for surplus publicly owned parcels can be a catalyst for communities thinking about economic development, facility needs and community development. Using publicly owned parcels for affordable housing can increase low- and middle-income households’ access to high-opportunity neighborhoods, where property values, zoning and site availability can make housing serving these populations scarce. It can also increase those households’ access to employment, transit, community centers, health care services and schools. Conversely, neglecting community needs during the publicly owned parcel disposition and development process – or failing to successfully execute that vision – can lead to rising community opposition to development and eroding community trust.

Publicly owned parcel development can take many forms and is affected, like any development, by a range of factors, including:

- Federal, state and/or local regulations governing the use and disposition of public sites
- Site characteristics such as size, shape and topography
- Existing infrastructure (or the lack thereof)
- Current zoning and use restrictions, and the likelihood of potential changes to code
- The use, form and scale of the surrounding parcels and neighborhood

These and other factors influence the development possibilities on a given site, the range of potential community benefits and the approach taken by the public agency.

REGULATORY PROVISIONS AFFECTING PUBLICLY OWNED PARCEL DEVELOPMENT



Public entities often face a range of regulatory restrictions on how they use publicly owned parcels, which can affect development feasibility and the ability to provide community benefits. Restrictions can be imposed at the federal, state and local level, with widely varying degrees of flexibility. Common regulatory stipulations include obtaining fair market value for the use of the property and/or following a specific procurement process (for example, soliciting an open-bid through a request for proposals). Such regulations may originate from a statutory requirement. For example, a local agency's charter (which can be subject to state control) may require open solicitation processes. Alternatively, specific regulations may be imposed by the funding sources used to acquire the property. A state law in Washington requires that land purchased with "enterprise funding," such as a dedicated tax revenue source, must be sold at fair market value (unless otherwise stipulated in state law). When properties are funded by multiple sources – for instance, a transit agency property receiving federal, state and local funds – the most stringent regulations generally apply.

Transit agencies are particularly well positioned to use publicly owned parcel development to bring community benefits. By definition, most of their sites include a core component for advancing opportunity – multi-modal transportation access. In addition, many have significant amounts of land available for development. New construction projects yield surplus land as part of right-of-way acquisition and construction staging. Some legacy systems have the potential for more intensive redevelopment on underutilized park-and-ride lots. When these parcels have been purchased in full or in part with Federal Transit Administration (FTA) funds, it triggers numerous regulatory requirements that protect the federal interest in the property. While the agency's provisions create an additional layer of compliance, in recent years FTA has taken significant action to facilitate development that includes affordable housing and other community benefits. Notably, this includes a 2016 update to its Joint Development guidelines that explicitly allows for flexibility in the Fair Share of Revenue (purchase/lease terms) standard for developments with affordable housing (see Appendix A for more information).

FTA criteria governing the allocation of its Major Capital Investment Grant funds (the main federal discretionary funding source for new transit projects) have also been updated to encourage the coordination of transit and affordable housing, including provisions that allow transit agencies to acquire land with an eye toward future development potential, rather than simply lowest cost.⁹

Many public entities have taken steps to support more equitable publicly owned parcel development, including adopting policies requiring affordable housing and/or taking community benefits into account in determining the fair market value of a property. These policies are discussed in the following sections, and can serve as examples for jurisdictions open to amending existing policy.

LESSONS FROM THE FIELD

Development of publicly owned parcels comes with both common and unique challenges. Despite offering critical opportunities for the development of affordable housing, there is often a significant disconnect between the goals of public agencies and what the market can build and available public subsidies. Furthermore, when public and private markets work together on development, there may be a clash of competing visions. It can be challenging to find a satisfactory common ground 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 outlines key elements and considerations that contribute to the success or failure of a publicly owned parcel development effort.

Public Agency Process and Capacity

Development priorities and protocols often depend in part on agency staff capacity and experience. Some agencies may prefer a quick and easy disposition process that maximizes revenue and minimizes staff time expenditure, particularly if real estate development is not a core competency of the public entity. 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. A well-intentioned effort to derive community benefits is unlikely to work if staff lacks the time or experience to navigate a robust community engagement process, review design specifications or manage a multi-phase solicitation process, among other necessary tasks.

In addition, publicly owned parcel processes can be made more difficult by institutional approval processes, even if there is a high-capacity real estate team. Regulatory processes and/or the need for additional resources may require that development efforts gain approval by elected officials who face political pressure from constituents. In other instances, appointed boards of directors may need to sign off on plans even if they do not always share the nuanced understanding of the intricacies of the development process. 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.

Matching Agency Approach to Site/Development Context

The characteristics of individual public sites can vary, which makes using a one-size-fits-all approach difficult and in many cases ineffective. Small sites may not justify the time and effort to undergo a robust planning and engagement effort, whereas larger, more transformative projects may

not succeed without such activities. 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. This report groups its recommendations into four different typologies (see chart below) based on the findings from the research process and review of literature.¹⁰ These typologies are illustrative in nature; even within these contexts, there can be significant site-by-site differences, diverse needs within communities, and varying agency capacity to manage development. Therefore, these typologies should serve as guidelines by which broad principles for development can be derived.

Characteristics	Typology			
	Small Site	Suburban	Infill	Large/Master-Planned Site
Surrounding uses	<ul style="list-style-type: none"> • Active 	<ul style="list-style-type: none"> • Active, often single use 	<ul style="list-style-type: none"> • Active, often mixed use 	<ul style="list-style-type: none"> • Variable • Previous uses may be obsolete
Existing density	<ul style="list-style-type: none"> • Low-to-mid 	<ul style="list-style-type: none"> • Low 	<ul style="list-style-type: none"> • Mid-to-high 	<ul style="list-style-type: none"> • Variable
Impact of potential publicly owned parcel development on existing neighborhood form/character	<ul style="list-style-type: none"> • Site contributes, but will not be transformative 	<ul style="list-style-type: none"> • May be catalytic and/or transform make-up of surrounding land uses 	<ul style="list-style-type: none"> • May be catalytic but would not constitute fundamental change of form 	<ul style="list-style-type: none"> • Transformative/revitalization is primary goal • Site has dominant impact relative to surrounding parcels
Supportive Infrastructure	<ul style="list-style-type: none"> • Exists, may need redevelopment 	<ul style="list-style-type: none"> • May exist but need significant upgrades and/or redevelopment to accommodate additional density or changes in use 	<ul style="list-style-type: none"> • Exists but may need upgrades 	<ul style="list-style-type: none"> • Nonexistent, obsolete and/or in need of complete upgrade/redevelopment to accommodate new development
Common Concerns/Challenges	<ul style="list-style-type: none"> • Lack of scale • Limited development potential 	<ul style="list-style-type: none"> • Parking • Zoning, land use and code changes • Connection to multi-modal transportation network • Transition between site and surrounding neighborhood forms • Neighborhood engagement 	<ul style="list-style-type: none"> • Parking • Potential historic preservation considerations • Neighborhood engagement 	<ul style="list-style-type: none"> • Infrastructure needs and necessary funding • Zoning, land use and code changes • Potential remediation requirements • Neighborhood engagement

Cross-agency and Cross-sectoral Coordination

Public agencies generally must coordinate with other public entities to accomplish their development goals, except in the rare instances where the same agency owns the land; has full land use, zoning and code authority; and is providing all relevant financing/subsidies for infrastructure and/or community benefits. The need for coordination 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. Such complications can lead to delays and costs for the developer, which can reduce the scope for community benefit and jeopardize development viability in some circumstances.

Managing Competing Goals and Interests

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/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.

Aligning Affordable Housing Resources

When affordable housing is an explicit goal of publicly owned parcel development, it is important to be thoughtful about how the units are financed. 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, and/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.¹¹ Therefore, if more affordable units (or deeper levels of affordability) are desired it may become necessary to provide for direct subsidy. Such subsidy can come from traditional affordable housing programsⁱⁱ or through site- or corridor-specific mechanisms, such as tax-increment financing districts.

Given these considerations, it is important for agencies to synchronize the timelines of public land solicitations with the processes for obtaining affordable housing subsidies. Some coordination with these subsidy providers (state housing finance agencies, local housing departments and public housing authorities) is necessary to ensure that there are sufficient resources available to meet affordability goals. Furthermore, it is important to consider whether other on-site requirements (parking, open space, community facilities) create financing gaps and/or conform to the rules and requirements of the subsidy programs (such as total development or per-unit cost caps as specified in Low Income Housing Tax Credit allocation policies).

Efficiency of the Solicitation Process

In responding to solicitations for publicly owned parcels, developers often incur significant due diligence expenses to explore a development site's viability. Thus, they face the risk of losing any funds expended on preliminary plans or environmental reviews if the development does not proceed – a particularly risky proposition for revenue-constrained mission-driven developers. It is important for agencies to carefully review their publicly owned parcel solicitations to ensure that they select an appropriate solicitation structure that is calibrated for their capacity and site development needs, as well as set a timeline that is calibrated for the solicitation's level of detail and requirements.

The structure of the solicitation process itself can be very important. Though the specific structure is sometimes dictated by law, public agencies can often choose among a range of options (or a combination thereof) including:

- **Requests for Information (RFI):** Often the first step in a multi-phase process, an RFI can be used to gather information about a site's potential from interested stakeholders. In some cases, the information submitted is more conceptual in nature, and can help the agency think through what it eventually wants to achieve with the site.
- **Requests for Qualifications (RFQ):** As with an RFI, an RFQ may precede a more detailed solicitation. Interested developers are asked to demonstrate capacity to undertake a project on a given site, and the agency can invite the most qualified respondents to submit a more detailed proposal.

ii Affordable housing developments are generally financed with a combination of debt and equity, as the revenue generated by affordable rentals is insufficient to finance the full cost of development through debt alone. The Low-Income Housing Tax Credit program is the primary source of equity for affordable multifamily developments, and any remaining financing gaps are often filled with a combination of sources that can include grants and soft loans.

- **Requests for Proposals (RFP):** Respondents are asked to submit a more detailed plan for development of the site. This approach requires a significant amount of due diligence work from both the respondents and the reviewing agency.

Selecting an appropriate approach can lead to a more efficient solicitation process. If the public agency has limited capacity but still wants a significant degree of control over the final development outcomes, it may be helpful to undertake a multi-phased structure that leads with an RFQ to narrow the pool of detailed development proposals during a subsequent, invitation-only RFP round.

The efficiency of the solicitation process also depends on the level of due diligence performed by the agency in advance and the requirements placed on prospective developers. Our research indicated that there is not a consensus on which due diligence tasks should be conducted in advance by the agency. As a general principle, an agency should avoid duplication by completing tasks that would not have to be replicated by the developer during the response or development process. High levels of pre-solicitation due diligence can reduce uncertainty and increase the quality of development proposals. Knowing in advance whether costly activities such as environmental remediation will need to be undertaken can also provide greater clarity on the scope for negotiating community benefits without jeopardizing viability. If the agency lacks the capacity to conduct these tasks, it is important to build an accompanying amount of flexibility for the developer into the solicitation requirements. Examples of potential agency-led due diligence activities can include title reporting, Phase 1 environmental review, geotechnical surveys and baseline feasibility analyses.

Managing the Community Engagement Process

Most mid-to-large scale real estate development includes a community engagement component. Publicly owned parcel developments may have heightened scrutiny given the increased role of the public sector and the associated accountability of the public agency to the affected neighborhood. Therefore, community engagement is essential to identifying community needs and shaping the development goals and solicitation process. Such engagement can also reduce the chances that community concerns will derail the development, whether legitimate or due to not-in-my-backyard (NIMBY) opposition. Public agencies have taken a range of approaches to this process, from passing this responsibility entirely to the developer, to conducting extensive outreach in order to develop the solicitation and its associated requirements.

There is no one-size-fits-all approach to managing community engagement. 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/community development plan. As such, it is important for public agencies to be aware of the challenges and trade-offs associated with different strategies, given the time, effort and expense of the process. Given this broad range of potential needs, techniques, goals and outcomes, identifying recommendations for specific community engagement approaches was outside the scope of this research. However, a range of resources do exist that can help inform a robust community outreach strategy. For a non-exhaustive list of resources, please see Appendix B.

It may be prudent in some scenarios to pass most or all community engagement activities on to the eventual developer, particularly in the context of smaller-scale sites, where agency staff capacity is severely limited and/or when an overarching neighborhood plan has already been ratified. However, in this scenario, it is critical that the solicitation timeline and requirements should reflect the need for community engagement, particularly in terms of design and use flexibility. More often, it is important for the public agency to begin the community engagement process, using it to inform the solicitation structure and establishing a process for continuity once the developer is selected.

Ensuring Quality while Providing Developer Flexibility

Publicly owned parcel solicitations often include prescriptive design, construction and site preparation standards that may apply in addition to local building codes and/or affordable housing design standards applied by the subsidy source. These standards may be enumerated in the solicitation itself and/or be applied through an agency design review process. Overlapping standards 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. Public agencies may be justified in requiring meeting some level of solicitation-specific design and construction considerations in larger developments that require coordination of multiple functions and services. For example, transit-oriented joint developments often require specifications that ensure continued, efficient access to on-site transit services. Co-located community facilities may have unique standards for accessibility. However, a more effective approach may be to provide higher-level, guiding design and quality principles when another jurisdiction's or funding program's standards apply.

In addition, friction between agency oversight and expediency can occur once the development process commences. Development plans and specifications can evolve for various reasons – responding to community needs, changes in financing terms and unforeseen soil/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.

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 also seek to obtain off-site and broader community-serving infrastructure as a community benefit. These can include but are not limited to sidewalk and road improvements, undergrounding of utilities, and creation of structured parking (particularly in the context of suburban park-and-ride replacement). 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. For example, estimates of structured parking costs range from \$12,000 - \$50,000 per space, depending on the market in question.¹² In some cases, development viability may be jeopardized, as demand for residential and/or mixed-use development may be insufficient to command high enough prices at a given density level to cover infrastructure costs. Therefore, it is important to carefully consider where specific infrastructure needs fall in the hierarchy of needs for a given site.

Increasing Developer Interest and Competitiveness

Public agencies generally require a private-sector partnership to develop publicly owned parcels. Successful public-private partnerships require effective developers and a solicitation framework that encourages robust competition. However, from the developer's perspective, a public agency land 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, then 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. Financial disclosure standards can be one obstacle to market-rate developer and investor participation. The purpose of these standards is to ensure that the developer has the capacity to execute on the proposed scope-of-work, but these disclosures could be subject to public records laws, which can deter developers concerned about a lack of privacy around sensitive financial information. Public agencies may also impose requirements related to

organizational finances – including standards for net assets and liquidity – to ensure adequate capacity. These provisions may deter both market-rate and nonprofit developer participation, particularly if they are onerous or unrealistic in nature.

The additional layers of complexity – real or perceived – involved with publicly owned parcel development also shape developer willingness to participate. Additional engagement or actions – such as expedited permitting – may be necessary to convince developers that the development can proceed in an expeditious manner and that any past protocol problems have been rectified.

In regions where inclusionary zoning policies are not prevalent, there may be fewer developers with significant experience in producing large-scale, mixed-income development. If a mixed-income community is the preferred approach for a site, joint ventures between market-rate and affordable developers may in some cases be the most efficient mechanism for achieving that goal. However, doing so requires additional layers of coordination, as the separate developers must coordinate design compatibility, on-site construction logistics and the different timelines for market-rate and affordable financing cycles. Managing this complexity requires an efficient process and clear chain-of-command between all parties.

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 transactions costs are low enough for financial viability. Multifamily and mixed-use developers may shy away from smaller sites. 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, depending on the context and the makeup of the region's developer network, it may be beneficial to aggregate or subdivide targeted parcels to increase participation.

EFFECTIVE PRACTICES AND RECOMMENDATIONS

Despite the complexities described above, examples of successful publicly owned parcel development that yield benefits to the agency, developer and broader community exist throughout the country. Public agencies can and do establish policies that effectively balance agency needs with community goals. The following recommendations are based both on real-world experiences and ideas for process improvements from practitioners experienced in the publicly owned parcel development process.

ADOPTING EFFECTIVE AGENCY POLICIES

Public agencies can establish leadership in improving process efficiency and providing affordable housing by adopting overarching goals and policies appropriate to the relevant portfolio, community need and resources available. These “table-setting” plans and activities can streamline the process for developing individual solicitations and provide greater certainty and clarity to the developer community. We group these recommendations into two categories: pipeline/process management and providing community benefit.

Recommendations for Pipeline/Process Management

Administrative activities, policies and procedures that guide public agency land development activities and are ostensibly unrelated to affordable housing/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.

Leading Practices: Disseminating Pipeline Information

The **Massachusetts Bay Transportation Authority (MBTA)**, the Boston region’s transit authority, has created an inventory and database of agency-owned parcels for agency use that includes basic site formation, as well as associated maps and plans.¹³

The **Boston Department of Neighborhood Development (DND)**, in partnership with coUrbanize, maintains an online platform that maps and catalogues information about city-owned land and buildings available for development, with the goal of increasing transparency in the development of city-owned land and city-funded housing. The online platform helps residents and developers easily find information about DND development projects and city-owned properties available for development, as well as track local projects, find meeting times and submit feedback through an online forum.¹⁴

In northern California, the **Santa Clara Valley Transportation Authority** lists its current and potential joint development sites, with information that includes acreage, current use and zoning, applicable general plan, net developable area, and council and school districts.¹⁵

Metro, Los Angeles’ transit authority, also publishes information about its pipeline for joint development, including relevant information about phase of development and timing for solicitation release.¹⁶



Identify and catalogue existing properties.

Ad hoc decisions regarding site prioritization can lead to 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. Agencies should take comprehensive stock of the parcels under their control and gauge the potential of each site. This analysis should include both vacant or underutilized parcels, as well as sites with current active uses. While parcels currently in use may not be immediate development opportunities, they occasionally need to be redeveloped as facilities age, may have underutilized site capacity, and/or may no longer fit the needs of the community.

For agencies with a critical mass of developable assets, it may be prudent to disseminate parcel information to the public. This can allow for forethought into potential redevelopment opportunities and be used to solicit feedback on site potential. Discussions with residents and neighborhood stakeholders can also be used to identify the range of community needs within a given neighborhood or jurisdiction, which can inform prioritization of sites as well as requirements in individual solicitations.

When disseminating information on potential sites, it is important to include the context on the timeline for development along with basic site information, so that interested developers (particularly nonprofits) do not expend significant time and effort analyzing sites that the agency has no ability to utilize within a reasonable time horizon.

Realistically assess agency capacity to undertake publicly owned parcel development and prioritize sites accordingly.

It is critically important for public agencies to match goals and expectations for publicly owned parcel development with available staff and financial capacity. Overburdened and/or inexperienced agency real estate development teams can have a significantly detrimental impact on a developer's ability to complete a project, when delays in approvals can mean the loss of funding. In the event of a mismatch between goals and capacity, agencies would benefit from investing in additional staff and/or recalibrating their ambitions.

Once agency capacity is accurately assessed, agencies should identify and communicate the pipeline of properties and associated timeline, which allows developers and public funders to plan

Leading Practices: Supplementing Agency Capacity

In Washington, D.C., redevelopment of the **Oyster Elementary School** was initiated by the school community, which subsequently set up the 21st Century School Fund to serve as an intermediary to broker agreement among the public school system and local government and developers, resulting in a new residential high-rise and generating sufficient funding to finance the school modernization, a new library and new playing fields.¹⁷

An unsolicited bid to the **Portland, Oregon, region's Tri-Met** led to the development of the West Gresham Apartments, which includes 27 rental units affordable to residents earning 30 to 60 percent of area median income.¹⁸

accordingly. As previously discussed, the process of site prioritization should be collaborative and iterative across agencies and with the community to ensure that community needs are being met and that relevant agencies have the capacity to approve any necessary permits and rezoning, and provide critical financing.

Public agencies can supplement their internal capacity and ability to execute on publicly owned parcel development by engaging in partnerships with external organizations and/or providing a process for unsolicited bids. Pre-planning and community engagement can be conducted by community/neighborhood groups or planning entities. In addition, agencies can establish a process to receive unsolicited proposals for individual sites, though procurement rules may require a subsequent open bid. Such processes should establish clear standards to ensure that agency interests are met and community benefits are included. This can include limiting such bids to developers whose developments meet affordability thresholds or who have conducted a meaningful community engagement process.

Use properties that are not the focus of immediate development activities to create community benefits.

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 can be productive and do not become a source of blight in a community.

While such interim uses can provide a clear public benefit, agencies should be cognizant that once these uses are established, their removal may be controversial, requiring provisions for relocation. 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.¹⁹ Nevertheless, such activities may still be desirable, as leaving properties vacant or underutilized for long periods of time can also strain relationships with a community.

Leading Practices: Interim Uses

Homes for Hope is an effort in Los Angeles to design inexpensive, code-compliant homes to help address the region's homelessness crisis. 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.²⁰

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.²¹ Such activities can promote activity and build a sense of community around station areas that might otherwise be relatively underutilized.

Arlington County, Virginia, purchased the site of a former grocery store for what is now the home of the Arlington Mill Community Center, which is co-located with an affordable housing development of the same name. The county converted the old grocery store to a temporary public community center for part of the 15 year-interim period between purchase and development.²²

Finally, for sites with active uses under consideration for redevelopment, agencies should work to ensure that those existing uses are not prematurely closed. The Benning Library in Washington, D.C., was closed in 2004 in anticipation of a mixed-use redevelopment that never materialized – a permanent replacement for the library was not opened until five-and-a-half years later.²³

Allow process flexibility for addressing different site contexts.

As described in the site typology matrix (chart on page 12), sites have a range of development contexts and associated needs. A public agency's property portfolio may include sites that fit a range of typologies. Therefore, agencies should balance the need for clear processes with the flexibility to adapt to the development and neighborhood context for each site.

Allow for neighborhood and corridor-level coordination.

Public agencies – and transit agencies in particular – may hold multiple parcels in a neighborhood or transportation corridor. Thinking about these sites in a holistic manner can enable multiple development and community needs to be met without overburdening an individual site. For example, if there is a need for both retail space and affordable housing in a neighborhood with two nearby public parcels, one use can be assigned to each site to reduce the complexity of managing the development and operation of retail space in an affordable housing development. Robust neighborhood- and corridor-level community engagement, design and planning/approvals processes can mitigate some of the need for lengthy site-by-site effort. In addition, a coordinated approach for proximate sites can increase efficiency by allowing for shared infrastructure, which can yield significant financial savings that can be redirected to other community benefits. Parking facilities provide a particularly promising opportunity for savings. A recent analysis of 12 major U.S. cities by Donald Shoup of the University of California – Los Angeles found that the average construction cost was \$24,000 per above-ground space and \$34,000 per underground space.²⁶

Leading Practices: Corridor-Level Approach

In conducting the required environmental reviews and site analysis for the T-Third light rail project, the **city of San Francisco** conducted a blanket environmental impact review (EIR) throughout the corridor, reducing the cost of similar EIRs for each development and expediting the entitlement process.²⁴ In addition, the **Metropolitan Transportation Commission** has established a Station Area/Priority Development Area Planning Program, which has funded comprehensive planning efforts that can include program level EIRs.²⁵

Negotiate terms, conditions and operating procedures with partner agencies to apply across solicitations.

Publicly owned parcel development rarely engages only one public partner. 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 can engage with these entities as part of their overall strategy to identify whether any elements of the development relationship are generalizable and negotiate any terms, conditions and procedures that would be consistent across solicitations.

Leading Practices: Cross-Agency Coordination

In 2012, the **city of Los Angeles** began work to update 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, and recommended a place-based approach, which included neighborhood-level strategies that prioritized 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 was created that outlined responsibilities for all departments, created a uniform contract for procurement and standardized performance standards across agencies. A new financing mechanism was also created, capitalized by the city’s HUD Community Development Block Grant allocation.²⁷

Set reasonable standards for developer participation.

Public agencies must assess a potential developer’s ability to execute an agreement. However, agencies should do so in a way that does not narrow the pool of potential developers. This includes being sensitive to the level of financial disclosure that for-profit developers and investors are willing to make, as well as the size of the balance sheet or amount of liquid assets for nonprofit developers. In addition, large upfront, pre-acquisition deposits and punitive price escalation clauses (penalties for missing specified performance targets) can deter small-to-medium scale developers from responding. Agencies accustomed to the procurement of construction contractors may harm development potential by applying contractor standards and assurances to developers. Separate processes should be adopted for construction procurement and land disposition.

Examples of due diligence requirements and performance assurances that do not place an unnecessary burden on potential developers may include but are not limited to: audited financial statements (particularly for nonprofit developers), evidence and statements regarding past performance of a similar nature, written evidence of access to capital, partially refundable deposits to be credited to land costs and deadlines for performance and remediating actions. In determining the specifics of these 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.

Consider future development potential when acquiring sites.

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.²⁸ Such purchases in the context of new transit development have been made possible by changes to the Major Capital Investment Grant program (see page 10). Those changes removed disincentives related to project cost evaluations that made purchasing additional land to improve joint development opportunities more difficult.²⁹ Such purchases can make it easier to execute equitable transit-oriented development.

Leading Practices: Site Assembly

In the Twin Cities, the **Minnesota Department of Transportation (MnDOT)** purchased the right of way for the Hiawatha Line (light rail) between Minneapolis, Humphrey International Airport and the Mall of America, including staging areas for construction equipment. When the project was complete, MnDOT sold the property to the Metropolitan Council (the Twin Cities metropolitan planning organization), which leased or sold the property to developers in coordination with the city of Minneapolis.³⁰

Recommendations for Providing Community Benefits

Public agencies that can optimize their pipeline management and development processes and procedures may increase their flexibility to provide affordable housing and other community benefits. The specific benefits a site produces can and should be appropriate for the characteristics and needs at that given site and neighborhood. Agencies can take a range of actions that create a supportive context for those negotiations and ensure that social equity is built into the process from the very beginning.

Identify community needs and potential benefits.

Agency plans and policies should be developed with input from the broader public – including citizens, nonprofit developers, community groups and other related public agencies. This engagement will help the agency understand the full range of needs as well as the specific opportunities to advance social equity. The prospects that a development will be successful are enhanced when the agency creates an atmosphere in which engagement plays a role in shaping future development, rather than being used to sell the agency or developer's vision.

a: Conduct continuous, clear and transparent communication processes.

Engagement can also build the base of community support that is necessary to advance both the overall policy and individual site efforts. In this effort clarity and transparency are critical. For example, in 2014, Arlington County, Virginia., responded to requests

from the affordable housing community and completed a Public Land for Public Good study to identify opportunities to intensify uses for publicly owned parcels, with the priority of meeting affordable housing and public school needs.³¹ Unfortunately, communication errors and a lack of a defined outreach process during the preparation of the report created confusion during the study rollout. In the subsequent politicized environment, opponents succeeded in swaying public opinion by characterizing the effort as a threat to public parks and green space and framing the conversation in a manner that gave the inaccurate impression that no site-by-site community engagement and planning would be pursued. In 2015, the county board withdrew the study, and the process had to be restarted with changes to methodology and focus.³²

Agencies have also faced criticism regarding the monetary valuation of public benefits used to determine purchase/lease discounts.³³ This can sometimes lead to accusations of publicly owned parcel development as a “gift” to developers. Therefore, it is important for agencies to be consistent and transparent about when and how discounts will be applied and to ensure that these discounts are commensurate to community benefit.

Leading Practices: Accounting for Public Land in Planning Efforts

In **New York City, a comprehensive planning effort in East Harlem** was led by a local council member, nonprofit and for-profit developers and other local nonprofit organizations. The community board and a community-organizing group conducted additional community organizing. This one-and-a-half year effort resulted in the East Harlem Neighborhood Plan, which included recommendations for public sites that included affordable housing, services, community facilities and open space.³⁴

b: Coordinate with rezoning, public facility development and community planning efforts.

Municipalities and land use planning agencies regularly engage in neighborhood planning efforts to meet critical community needs and shape future development. These planning efforts often include assessments of the need for community facilities, which present opportunities for co-location with affordable housing or other types of development. Public agencies with land within the planning boundaries should engage in these processes and work to make sure that a vision for use of these sites is included as part of the planning effort.

c: Coordinate with housing agencies and other funders.

While site control discounts can be leveraged to create some level of affordability and/or community-serving infrastructure, more ambitious development proposals often require additional subsidy. The public agency that holds the land should therefore coordinate with other relevant agencies that provide this subsidy to ensure that the financing capacity exists to accomplish these goals, and that the owner's solicitation requirements (for example, income-targeting levels) correspond with that of the funding agency. Furthermore, agencies should be aware of any cost- and procurement-related regulations for affordable housing programs to ensure that solicitation requirements do not push the development over thresholds that preclude the use of these subsidies. Similarly, public affordable housing funders should be aware of the opportunities for publicly owned parcel development within their jurisdiction and prioritize funding accordingly (with consideration to resource constraints and other priorities).

Leading Practices: Facility Co-Location

The new **Fire Station at Potomac Yard in Alexandria, Virginia**, was built as a five-story structure that includes 64 units of affordable housing, retail space and ground-level public space.³⁵

d: Explore options for co-location with other community facilities and other opportunities to maximize site potential.

Public agencies should explicitly consider broader public facility needs when managing and prioritizing sites within their pipeline. This can maximize site potential and facilitate both inter- and intra-agency efficiencies, such as locating supportive housing units on the same site as community health services. In matching facility needs with sites, agencies should be cognizant of the useful life of the relevant buildings. For example, a mixed-use library and residential development in Portland, Oregon, had to grapple with the targeted 100-year life for the library within the same building envelope as residential units with a significantly shorter lifespan.³⁶ Financing timelines may also differ, creating a risk that fines may be incurred or funding may be lost if capital assembly and/or construction for one use proceeds at a different pace than the other.³⁷ As such, it may be beneficial to subdivide parcels or utilize a condominium structure to create greater flexibility.³⁸

Establish goals and mechanisms to support affordable housing.

Once the needs and opportunities for affordable housing and community benefits are established, an agency can set specific goals for meeting those needs and begin to secure the tools that are critical to achieving those goals.

a: Make affordable housing and other community facilities a top priority for use of sites.

Agencies can ensure that publicly owned parcels become a tool for addressing the housing insecurity crisis by prioritizing affordable housing as the primary community benefit. This can take the form of portfolio-based goals, inclusionary requirements (either jurisdiction-wide, across the agency's portfolio, within neighborhoods/corridors and/or on each site) or by targeting specific sites in their entirety for affordable housing. In establishing the specific goals and policies, agencies should consider factors such as market conditions and the diversity of housing needs in terms of unit size and income/tenant targeting.

Leading Practices: Establishing Affordable Housing Policies

In establishing municipality affordability policies, a jurisdiction can ensure that all publicly owned parcels within its boundaries support affordable housing. A 2014 analysis found that nearly **500 local jurisdictions have adopted mandatory, voluntary and/or incentive-based inclusionary housing policies.**³⁹ States can also adopt policies that support affordability on publicly owned parcels. **California's State Surplus Land Act** requires that local agencies prioritize affordable housing, parks and open space when disposing of surplus land; provide a first right of refusal to entities that agree to use the site for these purposes; and provide notice to local public entities involved in affordable housing development, among other provisions.⁴⁰

King County, Washington, has a well-established Surplus Property Program for Affordable Housing, through which all county property deemed surplus is reviewed for suitability for residential development, with a portion of the resulting units reserved for affordable housing.⁴¹

In the **Atlanta region, MARTA,** one of the first transit agencies in the country to establish an affordable housing policy, set a goal to enter into five station-area development contracts that would reserve an average of 20 percent of units as affordable and require solicitations to set a percentage floor for the number of affordable units required.

Los Angeles' Metro sets a 30 percent affordability threshold for direct station area development activities and permits the agency to discount sale and lease prices accordingly.

Washington State enabling legislation, endorsed by Seattle-region voters in a broader referendum, requires **Sound Transit** to offer 80 percent of agency-owned property for affordable housing in which 80 percent of the units are reserved for households earning 80 percent of area median income or less.

The **San Francisco Bay Area Rapid Transit (BART) authority** has incorporated a 20 percent affordability requirement for agency-owned sites into its TOD policy, which is complemented by a station access policy to invest in non-auto access to BART stations.⁴²

The **Dallas Area Rapid Transit Authority (DART)** overcomes restrictive state legislation that prohibits the transit agency from using certain financing mechanisms by transferring property to the City of Dallas, which requires projects that benefit from public funding to reserve 10 to 20 percent of units for affordable housing.⁴³

See Appendix B for full text of the King County, MARTA, METRO, and Sound Transit affordability policies.

b: Ensure a range of tools to facilitate affordability goals.

Agencies should facilitate the use of a variety of tools to efficiently facilitate affordable housing development on publicly owned parcels. Direct provision of financial resources and/or free or discounted site control are the most straightforward mechanisms for supporting affordability and community benefits. Agencies can also enact policies or incentives that cross-subsidize or offset project costs as a form of indirect subsidy. Such

Leading Practices: Tools to Facilitate Affordability

The **New York City Department of Housing Preservation and Development (HPD)** facilitates the development of affordable and mixed-income housing on city-owned parcels by conveying those parcels, in most cases, to developers for a nominal price of \$1 per tax lot. The difference between the acquisition price and appraised value of the land is recorded in an enforcement note and mortgage, which is payable at maturity with interest. The enforcement note and mortgage may be structured as a forgivable loan in return for extended affordability beyond what is minimally required by other sources of funds. This structure helps address the burden of providing significant upfront payments for the acquisition of city-owned parcels, as well as advances the city's affordable housing plan by promoting the development of affordable housing on city-owned land. As an example, in November 2012, HPD issued a solicitation for the development of a mixed-use project on a city-owned parcel located in a high-opportunity Brooklyn neighborhood. A development team led by Jonathan Rose Companies was chosen in October 2013 to develop a 12-story, mixed-use development that will include 50 affordable housing units, 73 market-rate units and the space for arts programs. These benefits were accomplished without additional city subsidy beyond the discounted land value. The target date for construction completion is fall 2017.⁴⁴

In response to a solicitation from **Montgomery County, Maryland**, the Montgomery Housing Partnership (a nonprofit affordable housing developer) and the Donohoe Development Company developed The Bonifant in Silver Spring. Built in conjunction with a new downtown library, this mixed-use building includes 139 units that are affordable to seniors age 62 and older. The subsidy to facilitate affordability came in the form of a steep land discount from an estimated \$8.2 million to \$1.925 million, to be paid over a 77-year lease term.⁴⁵

Finally, affordable homeownership in eight of 24 units in Denver's Tremont Place Townhomes development was made possible through a creative financial structure in which the **Denver Housing Authority** agreed to provide 100 percent seller financing for the initial sale, to be repaid with interest from the proceeds of the ultimate sale of those units. This structure created savings from not having to obtain and pay costs associated with acquisition financing, helping bridge the \$120,000 per unit affordability gap.⁴⁶

policies can include but are not limited to additional density, expedited permitting, fee waivers and retention of title/site control until construction is ready to proceed. Agencies can also be creative in overcoming regulatory barriers. For example, it may be possible to adopt appraisal standards that consider the reduced revenue from affordable units in establishing property value without violating fair market value requirements.⁴⁷

c: If barriers exist to on-site affordable housing development, commit to dedicating revenue from market-rate sale of land to affordable housing development.

There may be circumstances in which public agencies are unable to be flexible in sale and/or lease terms, either due to statutory restrictions or in the absence of sufficient

development staff capacity to undertake robust negotiations related to community benefit. In such cases, it may be possible to dedicate all or a portion of the fair market value proceeds 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.

Leading Practices: Reinvestment of Revenue

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.⁴⁸

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 projects, such as the Kuniyuki Apartments project, which was at risk of losing its affordability restrictions.⁴⁹

Provide resources to assist developers in producing affordable housing on publicly owned parcels.

Public agencies and other stakeholders can work to support efforts to equitably develop publicly owned parcels, regardless of whether they hold significant land assets. Housing agencies can dedicate financial resources for this purpose. They can also facilitate technical assistance and capacity building efforts to boost developers' ability to deliver affordable housing on complex sites.

Leading Practices: Providing Resources

Pittsburgh's Urban Redevelopment Authority (URA) assists developers by linking them with available potential development sites and financial resources that are available for small- and large-scale new housing developments, such as the Pittsburgh Housing Construction Fund (which finances new construction and rehabilitation of for-sale housing). The URA also provides equity financing to assist community-based organizations in real estate development projects that provide housing or job creation opportunities. In addition, the Urban Redevelopment Authority works with for-profit and non-profit developers to structure individual long-term financing programs to create sustainable housing developments.⁵⁰

a: Allocate (or create incentives for) traditional affordable housing funding resources to be used in publicly owned parcel development.

Existing funding resources are important for delivering affordable housing at scale. Permanent funding sources such as the Low-Income Housing Tax Credit program can raise substantial equity for these developments, and state housing finance agencies can

either reserve a portion of this funding for public sites and/or offer point-based incentives in competitive allocations of housing credits. Given the sometimes lengthy timeline of affordable housing funding allocation, it may be beneficial to either focus on more flexible sources, such as 4 percent housing credits (though these credits do not provide the same level of subsidy).

Leading Practices: Allocating Traditional Sources of Capital

The **New York City Housing and Preservation Development's 2015 Qualified Allocation Plan (QAP)**, which establishes the policies and competitive structure for awarding the jurisdiction's 9 percent housing credits, establishes a housing needs target for "Projects that convert City owned land or buildings that are difficult to develop or are in the City's Third Party Transfer or Multi-family Preservation Loan programs to private ownership including, among other options, eventual tenant ownership." To advance that goal, the plan awards points to projects that meet these characteristics.

The **Colorado Housing Finance Agency's QAPs for 2011-2015** reserve a portion of credits for the HOPE VI redevelopment of the Denver Housing Authority's South Lincoln Homes.

For more information on QAP incentives, read "Giving Due Credit: Balancing Priorities in State Low Income Housing Tax Credit Allocation."⁵¹

b: Create dedicated sources of capital for affordable housing development on publicly owned parcels.

Traditional affordable housing sources may not meet the needs of every publicly owned parcel development context. In some markets, there may be sufficient permanent financing but a lack of acquisition capital that would allow nonprofit and mission-driven developers to compete for public sites with better-financed market-rate peers. Public agencies, community development finance institutions, philanthropic organizations and private lenders/investors can work together to create dedicated sources of capital to fill these financing gaps.

Leading Practices: Creating Dedicated Sources of Capital

In 2015, **King County, Washington**, committed to use up to \$83 million in funding to build and preserve 700 affordable and workforce housing units around transit centers – including on public land – over eight years. A portion of these funds was raised through the issuance of up to \$45 million in workforce housing bonds backed by local hotel taxes.⁵²

Some of the funding supports the **Regional Equitable Development Initiative (REDI) fund**. Enterprise Community Loan Fund, along with a group of public and private investors, created the REDI fund, a revolving loan fund designed to help affordable housing developers acquire land near transit. The REDI fund provides low-cost capital for the acquisition of land near transit. Each property acquired using the REDI fund will be required to have a share of apartments affordable to households at or below 80 percent area median income (AMI) or 20 percent below market rent. While not a requirement for each individual development, 25 percent of all apartments built or preserved through the REDI Fund must be at or below 50 percent AMI, with an additional goal to include at least 15 apartments at 30 percent AMI.⁵³

SITE-SPECIFIC RECOMMENDATIONS FOR EFFICIENT AND EQUITABLE DEVELOPMENT

Even the most effective public agency policies must be translated into individual site-based efforts to be successful. The combination of efficient agency-wide and solicitation-specific policies can encourage developer participation and competition and increase the likelihood that publicly owned parcel developments could realize substantial community benefits. These efforts must be sensitive to development context, though there are several broad principles that cut across site typology.

Ensure that each given site has a clearly defined and reasonable set of goals and priorities.

Developers interviewed over the course of this research reiterated the importance of public agencies clearly communicating their policy objectives. This includes the agency's priorities for public use, revenue or fair market value expectations as well as affordability levels. **Public agencies must determine which priorities are most important, as each has a cost.** 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.⁵⁴ Proposals that focused more on aesthetics could pay less for land and/or provided off-site affordable units; proposals promising the most revenue did not focus on affordability; and the proposal offering the most affordable units offered the city the least revenue and what has been characterized as generic design.⁵⁵ Though the specifics and priorities may be different, such trade-offs are inherent in all publicly owned parcel developments.

As with developing agency policies, **a robust and timely community engagement process is critical**, and giving a formal role to local community organizations can be beneficial. This engagement should be culturally appropriate and not limit outreach to just the immediate neighbors, as the broader community and potential future residents (or individuals and groups left out) are important stakeholders as well. This is particularly true for large-scale developments.

Leading Practices: Empowering Community Organizations

Paseo Verde, a 120-unit mixed-income development in a socioeconomically diverse neighborhood in **North Philadelphia**, is the culmination of the vision of **Asociación Puertorriqueños en Marcha (Association of Puerto Ricans on the March, or APM)**, a community group that has worked in the community for over 40 years. APM was selected to work on the site through a city solicitation process and engaged with Jonathan Rose Companies to develop the site. The development is near Temple University, adjacent to a transit station and also includes a health clinic. Past collaborations by APM include work with the city's redevelopment authority to assemble 111 vacant parcels to produce a shopping center that includes a cross-cultural supermarket.⁵⁶

While developing a discrete set of site priorities can be beneficial, **public agencies can also provide a menu of options for public benefit**, allowing respondents the flexibility to address trade-offs and develop the most efficient proposal given their goals and expertise. However, it is important that the methodology for weighing trade-offs is clear, and that requirements are not overly onerous.

Leading Practices: Offering Site Acquisition Incentives to Facilitate Affordability

The **city of Redmond, Washington**, issued an RFP offering a long-term lease of approximately .81 acres of downtown land for construction of a minimum of 50 units of affordable senior housing. The solicitation included multiple goals, such as providing affordable housing opportunities for seniors, creating a residential design sensitive to its current and future surrounding land uses and providing open space for residents, while integrating the experience of pedestrians and other passersby. To make this possible, the solicitation stated that the city is willing to consider a lease term of 75 years with a \$1 annual lease payment.⁵⁷

While goals and priorities should be clear, **site and design specifics should not be overly prescriptive unless necessary**. One of the most consistent pieces of feedback offered by both market-rate and affordable developers was to keep development programs in solicitations simple. **Specific requirements should focus on clear public purposes** – for example, accessibility, compatibility with existing street grids and infrastructure – rather than aesthetic judgments that are largely a matter of opinion. Developers may be able to see solutions for sites that public agencies have not considered. When programs for new developments are overly prescriptive upfront, it limits developers' ability to use their expertise and creativity to come up with the most viable solution.

The agency should also **base affordability expectations for individual sites on an understanding of the relationship among land values, infrastructure needs and the “affordability gap,”** or the amount of additional subsidy or offsetting cost savings/revenue upgrades that would make the development feasible at a given level of affordability.⁵⁸ It may be beneficial to **involve housing agencies/organizations to evaluate the feasibility of plans that include residential and affordable housing**, especially if the agency lacks significant real estate development or affordable housing experience. Such reviews and evaluations can help ensure that incentives to provide community benefits are proportionate to their costs and that the cost of the overall development program would not exceed funders' per-unit and total development cost limits. Housing experts can also assist in identifying more complicated challenges, such as considering whether density bonuses are calibrated appropriately given the relationship between density, height, construction type and development costs.ⁱⁱⁱ Finally, agencies should **maintain consistency and attempt to avoid imposing additional conditions** not included in the solicitation and/or the subsequent developer agreement, as early planning generally allows goals to be met in a more cost-effective manner.

iii For example, additional density can increase cost effectiveness and profitability, allowing for an increased ability to internally cross-subsidize affordable units. However, once a building's height exceeds a certain level, the developer must switch from wood-frame to more costly steel and concrete construction, which changes the profitability assumptions. Slow- and moderate-growth markets/neighborhoods may have insufficient demand to absorb the further density that would be needed to make high-rise construction feasible. These thresholds vary dramatically by market and sub-market, and are influenced by demand factors, building codes and existing transportation among other factors. Evaluating these factors requires sophisticated real estate development knowledge.

Create a clear chain-of-command for decision-making, designating a single lead agency where possible.⁵⁹

As previously discussed, development of a public site may require involvement from multiple public agencies, for example: the land use/planning authority, transportation and public works departments, state and/or local housing agencies and the land-owning agency (if not any of the preceding entities). Each agency has its own goals, capacities and timelines, which must be reconciled if development is to proceed in an efficient manner.

In developing the solicitation, the agency should **take stock of the applicable codes and design standards, and take steps to avoid overlap**. If standards outside of its direct purview apply (and are not the subject of cross-agency negotiations for flexibility), an agency can refrain from applying its own. Alternatively, agencies can also designate what it considers 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.⁶⁰ Under this structure, if a municipality requires a specific green standard that is different from the agency's listed preference, the developer does not need to incur the design, construction and certification costs associated with reconciling and implementing both standards. If a site has unique needs that necessitate a solicitation-specific requirement – such as preserving pedestrian access to a transit station entrance – the agency can include a limited and discrete set of “add-on” requirements designed to be in sync with other applicable standards.

Leading Practices: Streamlining Design Standards

The **Cleveland Land Bank** offers developers and homebuyers the opportunity to build on a land bank property, generally at an acquisition cost of \$200 per site. However, the traditional permitting, waivers and approvals process can last up to seven months in the city but a matter of weeks in the suburbs. To streamline and dramatically shorten this process, the land bank worked with the city's building and planning departments, Ohio City, Inc. (a neighborhood nonprofit) and Knez Homes (a developer) to take these steps before a lot is sold. Under this program, homebuyers can pick from a menu of home designs that have been pre-approved by all of the relevant agencies. Twenty percent of houses built through the program must be affordable at 80 percent AMI or less.⁶¹

Shifts in political and administrative leadership can also delay and/or derail publicly owned parcel processes.⁶² While agency policies can and should reflect current conditions and needs, the publicly owned parcel outreach and development process is often long enough that some turnover is inevitable. A publicly owned parcel program can become paralyzed if each site is subject to complete reconsideration upon such changes. Therefore, **individual solicitations should be structured to minimize the impact of agency leadership/oversight changes.** This can be accomplished through robust community engagement and cross-agency coordination before the release of the solicitation and an expeditious timeline for proceeding once the solicitation is released. Agencies can also institute a financial incentive structure (including penalties) for timely completion of tasks that applies to all parties, rather than just the developer. Such a structure could compensate a developer for delays caused by bureaucratic problems outside its control (protecting the developer's ability to provide community benefits) and discourage micro-management.

Leading Practices: Incentive Structures

In response to a solicitation from the **Boston Redevelopment Authority** to redevelop an old parking garage, Millennium Partners submitted a development proposal that utilized a creative structure for the site control payment.^{63, 64} The company offered \$100 million, plus \$100 per square foot of saleable residential space. The development included a partnership with the Asian Community Development Corporation for off-site affordable housing. The structure of this bid created a financial penalty for the agency if zoning or other concerns reduced the scale of the development. In August 2016, Millennium Partners' bid was accepted, and the development is expected to generate a total purchase price of \$150.8 million.

Agencies can also work to **obtain upfront zoning/land use approvals or utilize an expedited approval process** for a given site. These actions can mitigate the impact of the aforementioned shifts and reduce uncertainty for the developer. The permitting and approval process can be arduous and costly for a developer, as it must often finance acquisition through short-term acquisition capital and bear significant financial risk if the development does not proceed. These risks are exacerbated if the development vision requires significant up-zoning, infrastructure investment and/or a change to the existing neighborhood form. In some circumstances, it may be more efficient to mitigate that risk by facilitating as much of the approval process pre-solicitation – the agency is often already working with the broader community, already has the property under control (often tax-free) and may only bear maintenance expenses. Another option is to require the developer to seek approvals, but retain title to the property until all permits are received. In return, the agency may receive a more robust solicitation response, with more favorable terms. Absent these measures, agencies should recognize that the developer is bearing more risk, and structure the solicitation, timeline and financial incentives accordingly.

Meeting these timelines and targets may be more likely if there are cross-agency agreements and/or protocols related to the decision-making and approval process. Designating a single-lead agency or a cross-agency team with binding authority can decrease the likelihood of challenges related to bureaucratic fragmentation. Agencies can ensure that there is clear coordination between plan reviewers and inspectors and an efficient process for responding to change orders. Again, financial incentives can be established for adhering to the established timeline.

Be judicious in application of infrastructure requirements, with a focus on parking requirements.

Constructing infrastructure directly focused on and supportive of a given site is a standard part of development. Adding infrastructure requirements to serve the broader community or neighborhood could be considered a public benefit, but one that is often very costly. Agencies should carefully consider whether the benefits of these requirements exceed the costs. Requiring parking infrastructure in excess of demand can be particularly damaging, as the direct costs can be exacerbated by the opportunity costs associated with diverting portions of the site from more productive uses. Excessively large parking lots and large garages can also inhibit the viability of multi-modal transportation options and diminish the pedestrian environment. Therefore, such requirements should be imposed only after rigorous analysis based on the specific development context as opposed to outdated models based mostly on automobile-oriented development patterns.⁶⁵

Leading Practices: Transportation Demand Management

In the **Atlanta region**, MARTA's impressive suite of eTOD-supportive policies includes TOD guidelines that outline TDM options and strongly encourage shared parking arrangements between different uses to reduce the need for parking spaces in transit-served areas.⁶⁶

Arlington County (Virginia) Commuter Services is a county-run program that assists large-scale real estate development projects with developing TDM programs and provides services to increase the "availability, awareness and use of transit, ridesharing, carsharing, biking, bikesharing, and walking."⁶⁷

In 2012, the **city of Sacramento** removed minimum parking requirements in select districts, allowing a 35 percent reduction of required parking for projects that incorporate TDM measures, authorizing the zoning administrator to reduce required parking by 75 percent, requiring bicycle parking in certain areas and establishing a ratio at which bicycle parking can replace vehicular spaces.⁶⁸

By focusing on means (managing storm water) rather than ends (building pipes), agencies may be able to achieve multiple goals using non-traditional mechanisms in place of infrastructure. Thoughtfully designed open space and water retention techniques can mitigate runoff and potentially reduce water infrastructure costs. Transportation demand management (TDM) utilizes a range of techniques such as subsidized transit passes, car and bike share arrangements and facilitating first- and last-mile connections to reduce the amount of road and parking infrastructure required. In some contexts, such measures may be more cost-effective for both developers and residents than constructing expensive parking facilities.⁶⁹

Consider subdividing larger-scale sites if agency capacity or developer network is limited, and/or to encourage competition.

Public agencies holding large-scale sites face a series of difficult choices. The scale of these sites requires a substantial amount of due diligence. There may be a need for environmental remediation (as many such sites were home to former industrial uses). Communities may pressure the agency to quickly resolve challenges associated with such large-scale vacancy, which can have significant detrimental impacts on a neighborhood. However, such sites are an opportunity to execute a vision for transformational change for a neighborhood, and there have been many successful examples in which an entire site is undertaken by a single developer. If such capacity exists in the market, a master developer may be able to achieve economies of scale sufficient to pay for remediation, infrastructure upgrades and affordable housing. In other circumstances, it may be preferable to subdivide the site and make it available to multiple developers.

The obvious circumstances in which an agency may choose this approach are related to agency and developer network capacity. An agency may not have the staff capacity to manage the highly intensive planning, community engagement and monitoring tasks associated with large-scale development. Simply selling off a large site to a single developer without such due diligence increases the likelihood that considerations of neighborhood connectivity and social equity will be inadequately addressed. Likewise, efforts at development may be inhibited if the large developer network is too small to generate robust competition for the site.

If carefully planned, subdivision can open the process up to a wider range of developers; encourage more fine-grained development; improve integration into surrounding neighborhoods; and encourage diversity of design, building type and use.⁷⁰ This approach can also mitigate risk for the overall site, as the failure of one developer to secure financing or otherwise execute on the development agreement does not halt all activity on the site. 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 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.

A middle-ground approach to subdivision could be to partner with a broker or a master developer under the condition that a certain percentage of the sites must be parceled out to non-affiliated development entities. This approach should specify the conditions under which such transactions must occur. It would shift some of the administrative burden away from the agency while still reserving some level of involvement in executing an overall vision. However, it is important to ensure that there is a certain level of independence for developers operating on subdivided parcels. For example, a nonprofit working with a market-rate master developer has a different set of timing pressures and financing deadlines. Development agreements should be careful to mitigate the likelihood that permitting, approval, and/or financing delays (or project failure) for one developer do not carry over to the others.

Finally, subdivided parcels must be sized appropriately to accomplish an agency's goals. If sites are too large, small- and mid-sized developers may still be unable to participate. If sites are too small, it can create an administrative burden and potentially require re-aggregation of parcels to achieve scale for mixed-use or multifamily residential development.

Consider partnerships to secure permanent affordability.

The number of affordable housing units produced as part of any publicly owned parcel development is important, but lasting social equity relies on long-term, rather than initial, affordability. If affordability terms are short or unspecified, lower-income residents may be increasingly cost-burdened or displaced. This can be particularly problematic if publicly owned parcel developments are successful in catalyzing economic growth and improvements in quality of life.

Public agencies can avoid facilitating government-led displacement by taking steps to ensure affordability at the maximum term allowed in law (which varies from state to state). They can achieve this by including specific requirements in the solicitation for affordability terms and utilizing legal mechanisms such as lease terms and deed restrictions/covenants. Agencies can also work with organizations that specialize in this area, such as community land trusts. These

Leading Practices: Partnerships to Secure Permanent Affordability

In 2010, the **Denver TOD Fund** (funded by various public and private partners and managed by Enterprise) was created to support the preservation and creation of affordable housing in the neighborhoods impacted by the city's new transit expansion. Though not targeted specifically to public sites, 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 eTOD in this market. In December 2014, the fund was expanded to \$24 million. Rebranded as the Denver Regional TOD Fund, resources can now be utilized across the seven-county region and multiple borrowers can access funds.⁷¹

partnerships work across site typologies, though the specific partners may be different. For example, for small sites and/or affordable homeownership opportunities, an agency can partner with a local Habitat for Humanity affiliate or participant in HUD's Self-Help Homeownership Opportunity Program.

Agencies should also consider how they monitor and enforce commitments made by the developer, particularly if housing is outside of its core competency as an organization. One approach is to negotiate partnerships with housing departments/agencies. In doing so, it may be beneficial to ensure that solicitation affordability standards are in sync with those of the partner in question. Coordinating a publicly owned parcel development with traditional affordable housing financing programs has the benefit of creating a built-in mechanism for verification, as the developer would have to prove compliance to the funder.

Create back-up plans in the event of market disruptions.

Occasionally, developers are unable to execute on a proposed development effort. Sometimes this is the result of difficulties faced by that specific company, but even the best development

Leading Practices: Responding to Market Shifts

The **Arlington Mill development** (see page 21) was initially awarded to a developer in 2009 to execute on a mixed-income residential and community center. Financing for the market-rate portion of the project was rescinded as a result of the economic recession, jeopardizing the overall effort. In response, Arlington County conducted community outreach and decided to separate the project into two components: it moved ahead with construction of the community center on its own and began the process of finding an alternate development partner. The Arlington Partnership for Affordable Housing, a nonprofit developer, was selected, and in 2014 delivered 122 units of affordable housing to complete the mixed-use site.^{72, 73}

During the same timeframe, developers hoping to work with **Los Angeles' Metro** faced similar challenges related to the availability of conventional financing. Again, affordable housing capital played a counter-cyclical role and filled the development gap. Affordable housing developers completed a number of developments and produced a significant amount of affordable housing (32 percent) in station areas even prior to the agency's adoption of affordable housing requirements.⁷⁴

effort is susceptible to broader market conditions. Agencies should be aware of this fact and plan accordingly. This can include conducting due diligence on alternative actions and mitigating activities that could be considered before the solicitation is released, and regularly monitoring market conditions during the solicitation and development process.

Proactively address affordability impact on surrounding neighborhoods.

Municipalities and housing agencies with jurisdiction over neighborhoods surrounding a publicly owned parcel development effort should analyze the potential affordability impact on the neighborhoods. The net benefits of on-site affordability requirements may be minimized (or even negative) if the number of the 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, proactive preservation programs and financing tools, increased tenant-based assistance and community land trust acquisition of residential and retail/commercial space.

RECOMMENDATIONS BY PUBLIC LAND SITE TYPOLOGY

In applying the above principles, public agencies must consider the characteristics of the individual site. The optimal approach will vary widely depending on scale, existing use, surrounding uses and neighborhood form and infrastructure needs, among other factors. Just as there is no one-size-fits-all approach to agency policies, individual solicitations should be tailored to the unique site characteristics and community needs. This section provides recommendations based on common site typologies.

Typology 1: Small sites

Some common characteristics of the small site typology include:

- Sites may have been acquired through tax delinquency or for agency uses that are no longer relevant, or may represent extraneous square footage adjacent to other uses.
- There are active surrounding uses with lower- or medium levels of density. There is existing infrastructure, but remaining useful life may vary.
- Sites contribute to neighborhood form and character, but are not substantial enough to transform it.

- Vacancy/abandonment may be an issue; ongoing maintenance of scattered-site properties may be difficult.
- Scale and development potential may not justify intensive agency staff effort for any single site.

Recommendations

Select an appropriate method of parcel distribution.

Agencies should consider whether it is appropriate to undertake a site-by-site solicitation, package multiple properties into a single solicitation or attempt to aggregate adjacent sites into larger parcels, based on site/portfolio characteristics and goals/priorities. If the latter approach is taken, the resulting parcel may fall into a different typology.

Leading Practices: Tailoring Solicitation Scope to Agency Goals

The **city of Newark, New Jersey**, provides an example of site-by-solicitations by auctioning off parcels in disinvested areas. Individual households – not just professional developers – can participate in these auctions.⁷⁵

Both Philadelphia and Nashville provide examples of solicitations with packages of properties, focused on engaging professional developers. The **Philadelphia Land Bank's** Workforce Housing Program facilitates the development of affordable workforce housing on vacant publicly owned parcels by conveying some of those parcels to developers for a nominal price of \$1.00 per tax lot, with the goal of mitigating the costs of land acquisition for homes targeted at households earning up to 120 percent AMI.⁷⁶ In 2016, the **city of Nashville, Tennessee**, solicited bids from nonprofits for 13 sites. The transaction utilized a deed restriction that mandated that the resulting homes were affordable at 80 percent AMI for 20 years. The sites were paired with grant money from the **Barnes Fund for Affordable Housing**. Three nonprofits were selected to receive the sites.⁷⁷

Finally, **Baltimore Housing** (the city's combined housing authority and department of housing and community development) operates the Vacants to Value program to strategically purchase abandoned or derelict properties and facilitate private redevelopment of severely distressed blocks and to sustain healthy neighborhoods.⁷⁸

Streamline development standards to improve site viability.

The lack of scale and development potential for small sites makes it even more important to avoid adding additional bureaucratic burden and/or extraneous design and construction requirements to the solicitation. With less ability to recoup costs, such requirements may inhibit financial feasibility. Agencies can also work to proactively dismantle barriers to efficient development.

Leading Practices: Streamlining Design Standards for Small Sites

In addition to the partnership to streamline the approval and permitting process between the Cleveland Land Bank, Ohio City, Inc. and Knez Homes (see page 33), **Boston's Neighborhood Homes Initiative** made available 250 vacant city-owned parcels characterized as “missing teeth” (underutilized parcels on mostly in-use blocks), providing a streamlined process for neighborhood approval. Before releasing a solicitation for a given parcel, the Department of Neighborhood Development meets with abutting property owners to discuss neighborhood context and review prototype designs.⁷⁹

Proactively use sites as an opportunity to expand and/or diversify the developer network.

Agencies holding a large number of developable sites need a robust developer network to match. This network should not only have a critical mass of developers, but also have areas of focus to match the diversity of site typologies within the agency's portfolio. Small sites may have lower barriers to entry in terms of upfront capital requirements or capacity to execute the development type. The Neighborhood Homes Initiatives (see box above) includes smaller packages specifically intended to encourage participation by smaller-scale developers.⁸⁰ Small sites generally exhibit lower risk to the agency, as failure of a single development is less likely to have a substantial detrimental impact on the agency as failure of more complex site typologies. Agencies can use this lower-risk opportunity to broaden the range of developers capable of undertaking publicly owned parcel development, and take this track record into account when analyzing subsequent submissions for more complex developments. As previously mentioned, engaging smaller developers may require some effort to streamline agency procurement processes and protocols that increase transaction costs.

Utilize demonstration projects to provide alternative housing types

The increase in zoning and land use regulations over the course of much of the last century has decreased the diversity of housing types that are produced. In recent years, there has been a focus on reversing this decline and expanding development opportunities for a broader range of housing types. These housing types include but are not limited to smaller-scale attached buildings (such as duplexes or triplexes), small multifamily developments, microunits, “tiny homes” and accessory dwelling units. In some contexts, these building types may be naturally more affordable due to their size and amenities, and can help meet niche housing needs, including “missing middle” and first-time homeownership opportunities, as well as more permanent affordable and/or supportive housing solutions for homeless individuals.⁸¹ Some of these building types can also be used to provide a wider range of housing choices and affordability levels in lower-density, high-opportunity communities. Small public agencies can establish demonstration projects on small sites to test these models where they are currently absent and/or expand the developer network with the capacity to deliver this building type. This can be accomplished through pre-solicitation design consideration and permitting and approval work, as well preferences and incentives within the solicitation.

Typology 2: Suburban sites

Some common characteristics of the suburban site typology include:

- These sites are often the redevelopment of park-and-ride facilities or aging auto-oriented shopping centers.
- There are active but lower density surrounding uses, often – but not always – without mixed-use and/or walkable development patterns and/or integrated street grids.
- Sites may need significant infrastructure reconstruction, especially if the publicly owned parcel development deviates from the pre-existing neighborhood form.
- Significant consideration about parking levels is likely necessary; existing stakeholders may be accustomed to free (or inexpensive), readily available parking.
- Development may be catalytic and could transform the make-up of surrounding land uses. Therefore, transition between site and surrounding neighborhood forms may be a potentially critical consideration.

Recommendations

Undertake a robust planning and community-engagement effort.

The combination of scale and transformational character of many suburban site developments makes the planning and engagement process critical. The publicly owned parcel owner and other relevant agencies (the public works and land use planning departments in particular) must adequately plan for infrastructure redevelopment and connectivity with existing

development patterns. 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, permitting and approvals. Achieving this consensus requires a robust community engagement process. Many neighbors may be concerned about the impacts of increased density and traffic and/or resistant to changes in neighborhood form. Building trust and sharing timely and accurate process updates can help manage these relationships.



Focus on holistic community development, including services that are often absent in suburban framework.

Lower density suburbs may not have the full range of amenities and social services that are found in cities. Many suburbs are experiencing demographic shifts that challenge this dynamic. As the U.S. population ages, there will be an increasing need for support for seniors. Metropolitan areas across the country are also experiencing increases in suburban poverty.⁸²

The planning process itself can represent an opportunity to identify community needs and service gaps, and the development offers an opportunity to address some of these needs. For example, portions of retail/commercial space in mixed-use developments can be reserved for service providers, potentially in conjunction with housing targeted for special needs. Increased density can create the critical mass necessary to make certain social services viable in the suburban context. Finally, transportation infrastructure can be redeveloped to enhance the viability of non-automotive uses.

Ensure that new resident populations have opportunities to integrate into existing and new civic institutions.

New mixed-use development may increase household diversity in the community, particularly if the surrounding area is dominated by owner-occupied, single-family detached housing. However, there may be a real or perceived divergence in the perspectives between the established and newer groups within the community. There is a risk that these differences can become institutionalized. For example, neighborhood civic associations sometimes gerrymander boundaries or create membership rules that exclude condominium or apartment residents/representatives from membership. If this occurs, it can inhibit neighborhood cohesiveness, stifle collaboration and create opposition to future development proposals.

Therefore, it is important for public agencies and/or the developer to take a broader view of neighborhood engagement. Just as it is helpful for existing neighborhood residents to buy into the vision of the development, it is important that the development's residents become full partners in the community. Public agencies and developers can work to facilitate these connections through a range of mechanisms, including the use of community space, facilitating membership in existing civic institutions and establishing new institutions to meet specific needs. Agencies should work to create outreach efforts that are culturally and contextually sensitive and meant to engage the full diversity of the newly expanded community.

Adopt appropriate and integrated infrastructure/parking requirements.

Suburban sites may have significant infrastructure needs to facilitate new development types and integrate the development into the broader community, ensuring that it does not become an isolated island. While the structure and form of such infrastructure may vary based on neighborhood conditions, it is important to focus on extending multi-modal transportation options to the extent feasible.

The feasibility of various modes will depend on a range of factors, including population density, employment density and dispersion, integration of the road network and the existence (and robustness) of any public transportation options. While it may not be realistic to fully replicate the walkability and accessibility of more traditional urban development patterns in all contexts, incremental improvements can have a positive impact on people's lives – for example, creating sidewalk connections to enable safer walks to school, or a paratransit system that connects seniors to a community or retail center.

Creating a more functional street and pedestrian grid that is integrated to the public site can facilitate these goals. These connections can make it easier for people to walk to transit stops/stations and can be complemented by shared-use mobility efforts (such as car and bike shares) that bridge the “first and last mile” gaps.

Leading Practices: Reducing Parking Infrastructure Needs

Two **Twin Cities suburbs** have adopted policies that allow jurisdictions to hedge their projections for parking utilization. Woodbury's and St. Louis Park's proof-of-parking policies allow developers to refrain from initially providing the full required amount of parking if they can demonstrate that the amount exceeds demand, providing they can prove that the site can accommodate additional parking in the future. While the latter stipulation may prevent the addition of incremental density, landscaped areas would provide a better pedestrian experience than surface lots. Such policies could also provide data points for consideration in efforts to reduce parking minimums.^{83, 84}

Denver's Regional Transportation District (RTD) studied parking utilization and ridership data at its Alameda Station. Though existing lots were being utilized, the agency found that many of those parking in the lots were driving from an area soon to be served by a new rail line, and that many transit riders did not drive to the station. To achieve longer-term ridership gains through more intensive development, RTD reduced parking within the station area, allowing it to sell property for a 275-unit residential development.

Separately, RTD's Transit Village Garage in Boulder adopted a parking-management agreement designed to effectively minimize the number of spaces needed to accommodate a range of commuters and local users. The agreement utilizes shared parking spaces among various users, unbundled parking fees from commercial or residential rents, managed spaces and payments to offset construction costs and influence travel behavior.⁸⁵

Adopting efficient parking structures is important for supporting multi-modal transportation options. Automobile orientation can create a self-reinforcing cycle where each action that accommodates cars – more parking spaces and larger surface lots, wider roads, higher speed limits – degrades the pedestrian experience and usability of transit. In response, more people may choose to drive to meet some or all their needs, creating further demand for autocentric changes. However, some relatively straightforward measures can more efficiently utilize space and potentially level the playing field between modes. Transportation-demand management strategies (see page 35) can be utilized to encourage other transportation modes. For those that do drive, shared-parking strategies can be used to reduce the number of parking spaces in mixed-use neighborhoods, as residential buildings, restaurants and entertainment venues may have many vacant spaces during the day, whereas office buildings are likely to have excess capacity in the evenings and at night.

Leading Practices: Development-Level Transportation Demand Management

MARTA's transit-oriented development guidelines (see page 35) cite a successful example at the Atlantic Station complex in Atlanta, which utilizes a combination of street parking, traditional parking structures shared among various uses, a free shuttle to the nearby rail station, a carpool/vanpool brokerage, "guaranteed rides home," car and bike share programs, and incentive bonuses for mode-shifts away from single-occupancy driving.⁸⁶

Efficient planning and requirements can mitigate some of the costs of producing hard infrastructure. However, in the end, these investments still require significant amounts of capital. While it may be reasonable in some cases to expect a developer to pay all or most of the costs of infrastructure meant to serve the site itself, additional financing mechanisms may be necessary to support community-serving infrastructure, such as tax-increment financing.⁸⁷ Such value-capture mechanisms can be structured in a way to ensure that the initial developer – who often bears risk associated with new product types for the market – is not responsible for bearing the full cost of infrastructure that makes future developments possible.

Typology 3: Infill sites

Some common characteristics of the infill site typology include:

- There are active surrounding uses in an established community.
- Neighborhood may be mixed-use and mid-to-high level density.
- Supportive infrastructure exists but may need upgrades, particularly in the context of significant population growth.
- Development may be catalytic but would not constitute a fundamental transformation of surrounding land uses.
- If catalytic growth occurs, residents and businesses may be susceptible to increased cost burden.

Recommendations

Focus on gaps in community needs, preferably through pre-existing plans and/or pre-solicitation engagement.

Infill sites generally complement, rather than transform, the character of an existing neighborhood. That said, these sites can stimulate economic growth and development and still provide community benefits. To the extent possible, publicly owned parcels should be thought of in the context of broader neighborhood planning. In particularly hot markets or sub-markets, these sites can represent an important opportunity to provide affordable housing and/or community facilities without having to compete with better-financed market-rate developers and/or use eminent domain powers. Identifying neighborhood needs – and avoiding NIMBY opposition from well-established stakeholders – is likely to require an effective community engagement strategy.

Leading Practices: Community Engagement and Identifying Neighborhood Needs

In 2015, **Seattle's Roosevelt Neighborhood Association** established the city's first land use academy as a venue for neighborhoods to learn about and form a collective position on important land use issues and specifically, disposition of public land. For the Roosevelt community, this has been an important tool in shaping the TOD community that the neighborhood wants.⁸⁸

Maximize site potential.

Since the neighborhood surrounding an infill site may be fully built out, agencies should maximize site potential to accomplish multiple goals. Agencies can explore co-location of facilities and shared infrastructure to reduce the need to acquire additional parcels for these purposes. Focusing on complementary uses can also create operating efficiencies for service

programs and/or mitigate the need to construct additional infrastructure. For example, a mixed-use development featuring senior housing and a community health center and neighborhood-serving retail can create marginal savings in the use of paratransit services. Locating schools in mixed-use and/or residential communities can reduce the need for school bus services, particularly less-used transportation for after-school activities. However, both the land-owning and partnering agencies and developers should be cognizant of varying timelines for financing for various uses, and consider the impact on the overall development if one source should be delayed, as in the early stages of the Arlington Mill example described on page 31.

Leading Practices: Maximizing Site Potential

In addition to examples from Northern Virginia (Alexandria's mixed-use affordable housing/firehouse development, and Arlington's joint affordable housing/community center development, pages 26 and 21 respectively), **Boston's MBTA** partnered with Trinity Financial, Inc. to develop the Carruth at Ashmont Station as part of the station's redevelopment. This mixed-use development includes 74 affordable units, 42 market-rate for-sale units and 10,000 square feet of community-retail space, with a reduced amount of structured parking.⁸⁹

Typology 4: Large/master-planned sites

Some common characteristics of the large/master-planned site typology include:

- Transformation and revitalization are primary goals.
- Site has dominant impact relative to surrounding parcels.
- Previous use may be obsolete (e.g., vacant industrial facilities), and the site may have remediation concerns.
- The site may not have active surrounding uses.
- Infrastructure may be non-existent or obsolete.
- There may be significant overlap with the characteristics of suburban sites, and similar principles/recommendations may apply.

Recommendations

Focus on equity considerations from the outset.

Large/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.

Therefore, large/master planned sites should include a range of housing choices in a fully integrated manner, and significant consideration should be made for how the neighborhood form and development programming contribute to economic mobility.

Leading Practices: Robust Affordability Requirements

Plans for Plaza Saltillo, the first joint development project by **Capital Metro, Austin's (Texas) transit agency**, will reserve 17.6 percent of residential units as affordable housing. The development site is located one stop from downtown Austin on the Red Line commuter-rail corridor, and will redevelop an 11-acre brownfield into retail and office space and 800 residential units.⁹⁰ Unfortunately, current plans reflect changes that lowered the amount of affordable housing from the originally targeted 25 percent.⁹¹

Provide flexible mechanisms for meeting affordability requirements.

The scale of large/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 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. 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.

Leading Practices: Comprehensive Affordability Approaches

Austin's (Texas) Mueller neighborhood is in the process of being developed on a 700-acre abandoned airfield northeast of downtown Austin. Approximately one quarter of the nearly 6,000 planned residential units are to be affordable at a range of income levels. The Mueller Affordable Homes Program includes both affordable rental and ownership options, interspersed throughout the new neighborhood on blocks specifically designed to include a variety of price-points. Mueller will also include fully affordable buildings, such as Alder 51, a 240-unit development targeting households earning from 30-60 percent AMI that is financed in part with \$4 million in funding from the Austin Housing Finance Corporation. The project's developer, Catellus Development Corporation, also created the nonprofit Mueller Foundation. This organization is set up to hold second mortgages on all affordable homeownership units to facilitate permanent affordability using a shared-equity homeownership model.^{92, 93, 94}

Ensure integration of site to surrounding community.

As with suburban sites, it is important to consider how large/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/commercial uses), parking facilities and transportation infrastructure can create barriers that cut off other communities. In these cases, there is a risk of negative impacts akin to urban freeways, in which legacy neighborhoods are harmed as commuters speed past older shopping establishments to newer retail centers. 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.

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

Large/master planned sites create significant opportunities for subdivision or hybrid approaches in which a critical mass of the site is awarded to a master developer, but a targeted number of parcels are made separately available. The solicitation process for subdivided sites can occur simultaneously or in phases, depending on agency capacity and market conditions. The success of this approach requires careful consideration of overall infrastructure plans and development timing.

As discussed, 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.

There are also specific benefits in the context of large/master-planned sites. First, an approach with some degree of site subdivision can mitigate the risk that failure of the master 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. While these goals can be met through a thoughtful design process undertaken by a master developer, it may happen more organically with multiple developers.

Finally, subdivision of sites can support social equity by allowing for the potentially significant growth in equity (in the financial use of the term) to be more broadly shared. As stated, the development process for large/master-planned sites can create significant property value increases and the opportunity for wealth generation. The master developer approach concentrates this wealth within the public agency (through site control payments) and a discrete set of well-capitalized partners, relying on the community benefits negotiations to

create broader social impact. While this valid approach has succeeded, it is not the only path that can be taken. Subdivision or hybrid approaches can allow a portion of the value created by the overall development to be captured from the outset by a more diverse range of partners, especially if a portion of the development site is targeted for community-serving organizations.

Avoid the temptation to overload requirements and over-prescribe design requirements.

The blank-slate nature of large/master planned site development can lead a public agency to take a more aggressive approach to dictating community benefits and design requirements. This may be valid to a certain extent, particularly when surrounding neighborhoods are relatively distant and initial land values are low. However, these advantages can be quickly offset by significant costs related to topographical and geo-technical constraints, infrastructure requirements and remediation needs. Furthermore, the scale, complexity and financing needs associated with these sites may represent a high-risk/high-reward tradeoff, particularly if the site is awarded to a single master developer. As with all site typologies, failure to fully account for the direct and opportunity costs of each requirement or solicitation provision can increase that risk and diminish the developer's ability to provide core community benefits. Therefore, public agencies should prioritize the most pressing social equity considerations, limit micromanagement of the process and design, and provide an appropriate amount of developer flexibility to meet development goals.

CONCLUSION

In today's current environment of resource scarcity, publicly owned parcels represent a rare opportunity to provide a range of benefits to both the agency and the broader community. However, efficiency is critical to delivering on this promise, 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. While some agencies occasionally acquire new parcels, land is a discrete resource for others. To make the most of these sites, it is critical that careful thought and prioritization be given to their use, with a distinct focus on social equity.

This report and the accompanying appendices and supplemental materials provide a range of approaches and success stories for equitable publicly owned parcel development. Each site is different, and the application of any innovative and/or leading practices should be tailored to that local context. However, we hope that agencies can leverage this information, build on the lessons from past experiences and develop the next wave of innovative approaches to publicly owned parcels.

APPENDIX A

Utilization of FTA-Funded Property for Affordable Housing Development: Regulations Regarding Sale and/or Use of Site^{iv}

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 interest^v applies when the project for which the property was purchased receives FTA funding, in full or in part. State and/or 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 and/or developing property with a federal interest. The following paragraphs outline some of the potential options and the relevant regulations related to sale/lease terms (other terms also apply):

- **Property disposition:** If the 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.
- **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.
- **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 would 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.

iv Disclaimer: The information in this appendix is based on the Enterprise Policy team's interpretation of FTA regulations and has not been officially endorsed by FTA.

v 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).

- **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/lease terms and conditions must conform to FTA's "fair share of revenue" standard, which is distinct from "fair market value."
 - **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/lease costs to be based on the actual revenue generated by the project. The amount of revenue received must still be based on the amount of revenue generated.

Full regulatory information can be found in [FTA Circular 7050.1a: Federal Transit Administration Guidance on Joint Development](#), [FTA Circular 5010.1E: Award Management Requirements \(Chapter IV\)](#) and [49 U.S.C., 5334\(h\)\(1\)–\(h\)\(3\)](#).

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.

APPENDIX B

Effective Community Engagement Practices

Identifying recommendations for specific community engagement techniques was outside the scope of this research, given the diversity of characteristics of publicly owned parcels and the unique community engagement needs of different site and neighborhood types. However, a range of resources exist for public agencies and developers that can provide insight on effective engagement to create positive, collaborative outcomes, as well as overcome project opposition in more contentious circumstances. At a high level, the Institute for Local Government recommends that three actions be taken to achieve an effective public participation strategy for affordable housing: (1) resolve uncertainty early in the process with a well-designed process and clear, timely communications; (2) address different points of view in the presentation of developments, particularly those that are controversial; and (3) validate participation by ensuring that public views are welcome and respected.⁹⁵

A non-exhaustive list of community engagement resources includes the following materials.

Comprehensive Approach to Engagement

The U.S. Environmental Protection Agency's "Public Participation Guide"⁹⁶ provides information on a range of topics, including:

- Situation assessments
- The right level of public participation
- Public participation process design
- Public participation tools
- Public participation workshops
- Foundational skills, knowledge and behaviors
- Resources

Tools and Techniques

In 2012, Enterprise and Abt Associates provided technical assistance to the city of Los Angeles as part of the process for updating its consolidated plan, which is required by the U.S. Department of Housing and Urban Development. The plan assesses needs and guides the expenditure of certain federal grants passed through to the city. A recent case study details the city's effort to create a new vision for community development and the role of community participation, guided by robust data collection, analysis and visualization/mapping techniques.⁹⁷

More specifically, design charrettes can engage the community and address design, planning and development issues at both the building and neighborhood scale. Enterprise's Green Communities and Design Leadership teams have produced a number of resources for planning and implementing charrettes.⁹⁸

Advocating for Equitable Policies

PolicyLink provides materials to guide advocacy efforts around a range of social equity-related issues, designed to “strengthen the effectiveness of equity advocacy, identify opportunities to drive change, obtain feedback for improvement, and demonstrate results.”⁹⁹ This includes an Equitable Development Toolkit, which provides technical and advocacy resources related to “27 tools to reverse patterns of segregation and disinvestment, prevent displacement, and promote equitable revitalization.”¹⁰⁰

Building Support for Affordable Housing

California's Institute for Local Government provides a suite of planning and public participation tools¹⁰¹ for local agencies focused on affordable housing, covering topics such as:

- Conducting an initial assessment
- Building to code: law, procedure and public hearings
- Addressing legitimate community concerns
- Designing the public participation process
- Applying methods of community engagement
- Implementation, oversight and a framework for planning

Publications from the National Housing Conference and Enterprise/FrameWorks Institute have addressed the language and framing used to support affordable housing, providing information on effective communications to create more equitable communities.¹⁰² In addition, the Minnesota Challenge to Lower the Cost of Affordable Housing developed a Communications Toolbox to assist in advocating for “a full range of housing choices that is right for your community.”¹⁰³

APPENDIX C

Examples of Public Agency Affordability Policies

King County, Washington, Surplus Property Program (abridged for affordability provisions)

4.56.070 Facilities management division, county departments - responsibilities and powers in declaring county real property surplus.

C. County departments shall be required to report no later than April 1 of every year to justify departmental retention of all real property for which the department is the custodian to the facilities management division.

1. If in the judgment of the facilities management division a county department cannot justify the retention of real property for which it is the custodian or if a department determines that real property is surplus to its needs, the facilities management division shall determine whether any other county department has a need for the property that is related to the provision of essential government services, including, but not limited to, services for the public health, public safety or services related to transportation, water quality, surface water or other utilities. If the property is not needed for the provision of essential government services, the facilities management division shall then determine if the parcel is suitable for affordable housing. If it is deemed suitable for housing the county shall first attempt to make it available or use it for affordable housing in accordance with K.C.C. 4.56.085 or 4.56.100. Suitable for affordable housing for the purpose of this section means the parcel is located within the Urban Growth Area, zoned residential and the housing development is compatible with the neighborhood. If the property is not deemed suitable for the purposes described in this subsection C.1., then it shall be determined whether any other department has a need for the parcel.

D. The facilities management division shall review and make recommendations to the executive for uses other than the sale of surplus real property before a decision by the executive to dispose of such properties through sale. Other possible uses that shall be considered by the division in accordance with this chapter are:

1. Exchanges for other privately or publicly owned lands that meet the county's land needs;
2. Lease with necessary restrictive covenants;
3. Use by other governmental agencies;
4. Retention by the county if the parcel is classified as floodplain or slide hazard property;
5. Use by nonprofit organizations for public purposes; and
6. Long-term lease or sale for on-site development of affordable housing.

E. The facilities management division in consultation with the department of community and human services shall, no later than July 1 of each year, submit a report to the council identifying surplus county real property suitable for the development of affordable housing. Affordable housing for the purpose of this chapter means residential housing that is rented or owned by a person:

1. Who is from a special needs population and whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income; or
2. Who qualifies as a very low-income, low-income or moderate-income household as those terms are defined in RCW 43.63A.5102.

King County, Wash. "Title 4 - Revenue and Financial Regulation." King County, Wash, January 17, 2017. [aqua.kingcounty.gov/council/clerk/code/07 Title 4.htm](http://aqua.kingcounty.gov/council/clerk/code/07_Title_4.htm).

Sound Transit 3 Authorizing Legislation (abridged for affordability provisions)

Note: This legislation was approved by Washington state to authorize a local ballot measure to approve a levy to support regional transportation investment. That measure, commonly referred to as ST3, was passed in 2016.

Sec. 329. A new section is added to chapter 81.10438RCW to read as follows:

- (1) A regional transit authority that includes a county with a population of more than one million five hundred thousand must develop and seek voter approval for a system plan, which meets the requirements of any transportation subarea equity element used by the authority, to implement a regional equitable transit-oriented development strategy for diverse, vibrant, mixed-use and mixed-income communities consistent with transit-oriented development plans developed with community input by any regional transportation planning organization within the regional transit authority boundaries. This system plan, which must be part of any authorizing proposition submitted to the voters after the effective date of this section, must include the following:
 - (a) The regional transit authority must contribute at least four million dollars each year for five consecutive years beginning within three years of voter approval of the system plan to a revolving loan fund to support the development of affordable housing opportunities related to equitable transit-oriented development within the boundaries of the regional transit authority.

- (b) (i) A requirement that when a regional transit authority disposes or transfers any surplus property, including, but not limited to, property acquired prior to the effective date of this section, a minimum of eighty percent of the surplus property to be disposed or transferred, including air rights, that is suitable for development as housing, must 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.
- (ii) (A) If a qualified entity receives surplus property from a regional transit authority after being offered the property as provided in (b)(i) of this subsection, the authority must require a minimum of eighty percent of the housing units constructed on property obtained under (b)(i) of this subsection to be dedicated to affordable housing.

(B) If a qualified entity sells property or development rights obtained through (b)(i) of this subsection, it must use the proceeds from the sale to construct affordable housing within one-half mile of a light rail station or transit station.
- (c) A requirement that the regional transit authority must work in good faith to implement all requirements of this section, but is not required to comply with a requirement imposed by (b)(i) or (ii) of this subsection if the requirement is in conflict, as determined by the relevant federal agency, with provisions of the applicable federal transit administration master grant agreement, federal transit administration full funding grant agreement with the regional transit authority, or the equivalent federal railroad administration agreement necessary to establish or maintain eligibility for a federal grant program.
- (d) A requirement that (b) of this subsection does not apply to property to be transferred to governments or third parties in order to facilitate permitting, construction, or mitigation of high-capacity transportation facilities and services.
- (2) For the purposes of this section:
 - (a) “Affordable housing” means long-term housing for persons, families, or unrelated persons living together whose adjusted income is at or below eighty percent of the median income, adjusted for household size, for the county where the housing is located.
 - (b) “Qualified entity” means a local government, housing authority, and nonprofit developer.

- (3) A regional transit authority implementing subsection (1)(b) of this section must, at the end of each fiscal quarter, send a report to the appropriate committees of the legislature and post a report on its web site detailing the following activities:
- (a) Any transfers of property that have occurred in the previous fiscal quarter pursuant to subsection (1)(b) of this section; and
 - (b) Any progress in implementing any regional equitable transit-oriented development strategy for diverse, vibrant, mixed-use and mixed-income communities approved by the voters pursuant to this section.

Washington State Legislative Evaluation & Accountability Program Committee. "Senate 2015-17 Transportation Budget & Funding Proposals." 2015. leap.leg.wa.gov/leap/budget/detail/2015/st1517p.asp.

MARTA TOD Guidance (abridged for affordability provisions)

Policies for Implementing MARTA's TOD Guidelines; Adopted by the MARTA Board of Directors (November 2010)

4. Affordable Housing

As stated on page 48 of the TOD Guidelines, MARTA believes that residential and mixed-use TOD projects should include a significant component of affordable housing. Achieving this will require a collaborative effort among multiple stakeholders—the municipal and county zoning jurisdictions in the MARTA service area, their housing authorities, the state of Georgia, the Department of Housing and Urban Development, for-profit and non-profit developers, lenders, community groups, and MARTA itself. Together, these stakeholders must be prepared to apply a diverse affordable housing “toolbox”, including land availability, zoning, housing finance subsidy programs, and infrastructure improvements. MARTA intends to be an active participant in this process.

To that end, MARTA will apply a policy goal of 20% affordability, on average, to joint development projects undertaken subsequent to the adoption of the TOD Guidelines. As defined by MARTA, affordable housing includes workforce housing, as well as housing affordable to seniors with low, moderate, or fixed incomes and persons with disabilities. Workforce housing, in turn, is defined as rental housing affordable to households earning 60% to 80% percent of the Atlanta Metropolitan Statistical Area Median Income (“AMI”); or for-sale housing affordable to households earning 80% to 100% percent of AMI.

Joint development projects with 10 or more residential units will be subject to the following requirements. On a project-by-project basis, MARTA will establish a minimum percentage of affordable units. The percentage will reflect market conditions, zoning, and the availability of federal, state, or local housing finance incentives. MARTA may specify that a portion of the required affordable units shall consist specifically of workforce housing. The minimum percentage of affordable units established for a given project will be considered a “floor”, and developers will be encouraged to propose additional affordable units through the Request for Proposals (RFP) scoring criteria. Similarly, the AMI percentile used to define workforce units will be considered a “ceiling”, and developers will be encouraged to provide units affordable to lower AMI percentiles.

Within the density allowed by zoning (including any zoning relief or modification which may be associated with a project), MARTA will use both higher densities and reduced parking requirements as financial incentives for the inclusion of workforce units. MARTA will encourage zoning jurisdictions to adopt reduced parking requirements for TOD housing in general and affordable housing in particular, reflecting lower average car ownership among transit-dependent households.

The affordable housing requirements for each project and any applicable incentives will be clearly stated in the Request for Proposals. The affordable housing terms offered by the designated developer and agreed to by MARTA, will be included in the Joint Development Agreement (“JDA”). The JDA will also include specific procedures to ensure that the designated affordable units are delivered on schedule; are designed and built consistent with the standards required by MARTA; are marketed on a fair and transparent basis to households earning no more than the AMI percentile and household size associated with each unit; are maintained as affordable for an extended period of time; and cannot be used as speculative investments.

MARTA. “Policies for Implementing MARTA’s TOD Guidelines: Adopted by the MARTA Board of Directors.” Atlanta: MARTA, November 2010. www.itsmarta.com/uploadedFiles/More/Transit_Oriented_Development/MARTA-TOD-Implementation-Policies-Adopted-Text-November-2010.pdf.

Los Angeles Metro Joint Development Program (abridged for affordability provisions)

Policies and Process (Updated February 2016)

- B. Community Integration, Engagement, Affordable Housing and Design: Metro's Joint Development Program will seek projects that engage stakeholders and create vibrant, transit-oriented communities that offer a range of housing types, job opportunities, and services centered around public transit facilities.
1. Community Integration. Metro will seek to create projects that are compatible with the surrounding community and reflect the needs and desires of the neighborhood in which they are situated. Like any private development, joint developments are subject to the land use policies and approval processes of the host jurisdiction.
 2. Community Engagement. Metro will ensure that the Joint Development Process actively engages community members at every development stage.
 3. Affordable Housing. Metro's Joint Development Program seeks to facilitate construction of affordable housing units, such that 35% of the total housing units in the Metro joint development portfolio are affordable for residents earning 60% or less of the Area Median Income (AMI). The joint development portfolio includes properties for which Metro maintains long term ownership. It does not include surplus land that is sold in fee. Affordable housing is defined as housing that is covenant-controlled, provided on an income-restricted basis to qualifying residents earning 60% or less than AMI as defined by the CA Tax Credit Allocation Committee, and often subsidized by public or non-profit funding sources.
- E. Affordable Housing Policies: A large portion of Metro riders are low-income and transit dependent. Meanwhile, Metro transportation investments have the potential to raise the value of property near Metro transit investments. Thus, it is in Metro's and the community's interest to maintain and grow ridership by promoting the development of affordable housing on appropriate Metro joint development sites. In addition, State and Federal guidance encourages coordination of investments and policies to accommodate affordable housing near transit. Metro will define affordable housing as housing for residents earning 60% or less than AMI, and will prioritize units with even deeper affordability levels for very low income and extremely low income residents. Metro will use the following policies to promote affordable housing on joint development sites:
1. Range of Types. Joint development projects with a residential component are encouraged to provide a range of housing types to meet the needs of a diversity of household incomes, sizes, and ages.

2. Land Discounting. Where appropriate, and subject to FTA approval (if applicable), Metro may discount joint development ground leases below the fair market value in order to accommodate affordable housing. Such a land discount may not be greater than 30% of the fair market value.
3. Proportional Land Discounting for Affordable Housing. The proportional discount of the ground lease may not be greater than the proportion of affordable units to the total number of housing units in the project, with a maximum discount of 30%. For example, land value for a project that has 20% affordable units could be discounted up to 20%. Land value for a project with 100% affordable housing could be discounted up to 30%. In the case of mixed use projects, the discount will be to the land value attributable to the housing portion of the project.

F. Development Solicitation Policies:

3. Community Based Organizations (CBO)/ Small/Disadvantaged Business Enterprise (SBE/DBE) /Disabled Veterans Business Enterprise (DVBE). Metro strongly encourages partnerships with local Community Based Organizations that provide affordable housing and other community serving programs and uses to its joint development sites, as part of the development team.

Los Angeles County Metropolitan Transportation Authority. "Metro Joint Development Program: Policies and Process." Los Angeles County Metropolitan Transportation Authority, February 2016. https://www.metro.net/projects/joint_dev_pgm/.

APPENDIX D

List of Recommended Actions/Practices

Adopting Agency Policies

- **Pipeline and process management**

- o Identify and catalogue existing properties.
- o Realistically assess agency capacity to undertake public land development and prioritize sites accordingly.
- o Promote community benefits from properties that are not the focus of immediate development activities.
- o Allow process flexibility for addressing different site contexts.
- o Allow for neighborhood- and corridor-level coordination.
- o Negotiate terms, conditions and operating procedures with partner agencies to apply across solicitations.
- o Set reasonable standards for developer participation.
- o Consider future development potential when acquiring sites.

- **Providing community benefits**

- o Identify community needs and potential benefits.
 - Conduct a continuous, clear and transparent communication process.
 - Coordinate with rezoning and community planning efforts.
 - Coordinate with housing agencies and other funders and explore options for co-location with other community facilities.
- o Establish goals and mechanisms to support affordable housing.
 - Make affordable housing and other community facilities a top priority for site uses.
 - Ensure a range of tools to facilitate affordability goals.
 - If barriers exist to on-site affordable housing development, commit to dedicating revenue from market-rate sale of land to affordable housing development.
- o Provide resources to assist developers in producing affordable housing on public land.
 - Allocate (or create incentives for) traditional affordable housing funding resources to be used in public land development.
 - Create dedicated sources of capital for affordable housing development on public land.

Site-specific Recommendations for Efficient and Equitable Development

- **Cross-cutting**

- o Ensure that each given site has a clearly defined and reasonable set of goals and priorities.
 - Determine the most important priorities based on trade-offs.
 - Conduct robust and timely community engagement.
 - Consider whether a menu of flexible options for developers is appropriate.
 - Avoid overly prescriptive site and design specifications.
 - Focus specific requirements on clear public purposes.
 - Base affordability expectations on the relationship between land values, infrastructure needs and the affordability gap.
 - Involve housing agencies/organizations to evaluate the feasibility of residential and affordable housing plans.
 - Maintain consistency throughout the process.
- o Create a clear chain of command for decision-making, designating a single lead agency where possible.
 - Take stock of applicable codes and design standards and take steps to avoid overlap.
 - Structure solicitations to minimize the impact of agency leadership/oversight changes.
 - Obtain upfront zoning/land use approvals or utilize an expedited approval process.
 - Explore cross-agency agreements and/or protocols related to the decision-making and approval process.
- o Be judicious in application of infrastructure requirements, with a particular focus on parking requirements.
 - Impose requirements only after rigorous analysis based on the specific development context.
 - Explore use of non-traditional mechanisms in place of infrastructure.
- o Consider subdividing larger-scale sites if agency capacity or developer network are limited, and/or to encourage competition.
- o Consider partnerships to secure permanent affordability.
- o Create back-up plans in the event of market disruptions.
- o Proactively address affordability impact on surrounding neighborhoods.

- **Typology 1: Small sites**

- o Select an appropriate method of parcel distribution.
- o Streamline development standards to improve site viability.
- o Proactively use sites as an opportunity to expand and/or diversify the developer network.
- o Utilize demonstration projects to provide alternative housing types.

- **Typology 2: Suburban sites**

- o Undertake a robust planning and community-engagement effort.
- o Focus on holistic community development, including services that are often absent in the suburban framework.
- o Ensure that the new resident population has opportunities to integrate into existing and new civic institutions.
- o Adopt appropriate and integrated infrastructure/parking requirements.

- **Typology 3: Infill sites**

- o Focus on gaps in community needs, preferably through pre-existing plans and/or pre-solicitation engagement.
- o Maximize site potential.

- **Typology 4: Large/master-planned sites**

- o Focus on equity considerations from the outset.
- o Provide flexible mechanisms for meeting affordability requirements.
- o Ensure integration of site into surrounding community.
- o Consider subdivision of site to meet a range of social equity-related goals.
- o Avoid temptation to overload requirements and over-prescribe design requirements.

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www.EnterpriseCommunity.org

70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044

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