

May 30, 2023

The Honorable Anna Caballero
California State Senate
1021 O Street, Suite 7620
Sacramento, CA 95814

Re: Senate Bill (SB) 747 - Opposition

Dear Senator Caballero,

On behalf of MidPen Housing, we write in respectful opposition to SB 747. The Legislature substantially strengthened the Surplus Lands Act (SLA) in 2019 declaring that “the provision of a decent home and a suitable living environment for every Californian is a priority of the highest order.” SB 747 would be a significant and concerning step back from this commitment.

MidPen Housing is one of the nation’s leading nonprofit developers, owners, and managers of high-quality, affordable housing and onsite resident services. Since MidPen was founded in 1970, we have developed over 125 communities and 8,500 homes for low-income families, seniors and those with supportive housing needs throughout Northern California.

The State Surplus Lands Act (SLA) is a landmark housing law that requires public agencies, including cities, when disposing of public land they no longer need, to first make it available for affordable housing development. The SLA creates a timeline for local jurisdictions to dispose of surplus land, one that gives the first right to bid on it to affordable housing builders but allows for local jurisdictions to move forward with their plans if no agreement is struck. Since January 2021, surplus land transactions tracked by the California Department of Housing and Community Development (HCD) have resulted in 8,387 housing units, including over 5,800 units of housing affordable to lower-income households. HCD estimates these affordable units, catalyzed by the SLA since 2021, will house over 115,000 lower-income Californians over the duration of their affordability period.

By creating an alternative process for surplus land disposition, SB 747 would severely undermine the purpose of the SLA. SB 747 allows local jurisdictions to bypass the entire SLA process with the simple passage of a local resolution that the transfer of land, “will assist in the creation of economic opportunity.” This is a step backwards and an abdication of California’s housing first responsibilities.

While we are sincerely sympathetic to the need to encourage economic development and job growth, the SLA does not ultimately prevent local jurisdictions from disposing of the land as they see fit. They must simply follow the timeline and steps outlined by state law and guidelines from HCD. HCD reports that from the 237 standard SLA dispositions that the Department has reviewed, there are currently 21 projects in the pipeline as a result of the Department’s direct engagement, generating a total of 2,994 housing units of which 1,832 are affordable. These are units that would

have been unlikely to be developed in this capacity without the SLA, and the 1,832 affordable units will serve an estimated 36,000 lower-income households over the lifespan of their affordability covenants. It also means that when cities went through the SLA process, affordable housing moved forward on the projects only 11 percent of the time. In the other 89 percent of cases, cities were able to dispose of the land as they saw fit.

The affordable housing community has significant concerns with the bill, including the following:

- The expansion of "agency use" undercuts the definition that was developed in 2019 for AB 1486 and treats disposition of public land to third parties as equivalent to an agency directly operating it.
- The expanded definition of "district" gives far more entities exemptions that were crafted specifically for special districts and their unique circumstances.
- Limiting the definition of "dispose" to apply to leases only if they have a term greater than 35 years creates a huge loophole.
- A long list of new exemptions that takes a great deal of public land out of reach for affordable housing.
- Making all exceptions subject to administrative declaration rather than providing this streamlining only for situations where the determination of exemption is based on a purely objective standard.
- Eliminating noticing requirements for affordable housing with as little as 25% of units for lower income housing.
- Modifying the exemption for mixed-use development to remove any minimum parcel size and any minimum number of affordable units that would have to be provided.
- Expanding the definition of legal restrictions that qualify public land as exempt surplus.
- Including "joint development" would effectively exclude all transit-agency owned land and permit development of "TOD" with no consideration of housing.

Many provisions of the bill merit a broader conversation. We can appreciate the additions to (c) (1) of Section 54221 of the Government Code, but these should be discussed closely with the housing community to maximize opportunities to build affordable housing. The same principles should be applied to the list of districts added by the bill (2) (B) (iii). The bill would transform an existing exemption for transfer of small and landlocked parcels to an adjacent property owner into an unlimited exemption for transfer of parcels of any size to an adjacent owner.

The bill also proposes five additional legal restrictions as reasons to bypass the SLA and four new exempt categories as well. These exemptions should be carefully considered in a broad stakeholder process to ensure critical land and opportunities for affordable housing are not lost.

The bill includes a wide range of other additions which should be considered in a broader stakeholder process as well. We are committed to a productive discussion on how to improve the SLA and would look forward to working with your office and other interested parties to find productive paths forward.

As written, SB 747 weakens one of the most powerful laws protecting our public resources and championing our affordable housing goals. Given the Act's tremendous accomplishments in making thousands of acres of public land available for affordable housing development in the last few years we can say that the Act is doing the job it is meant to do. The Legislature ought to reaffirm its commitment to using public land for the public good and creating permanent housing solutions for the 170,000 Californians who are experiencing homelessness on any given night.

For these reasons we must remain respectfully opposed to SB 747.

Sincerely,



Matthew O. Franklin
President and CEO
MidPen Housing Corporation

CC: Abram Diaz, NPH Policy Director