

# **Bond Case Briefs**

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## **LAND USE - CALIFORNIA**

### **Anderson v. City of San Jose**

**Court of Appeal, Sixth District, California - November 26, 2019 - Cal.Rptr.3d - 2019 WL 6317875 - 19 Cal. Daily Op. Serv. 11, 372**

Low-income renters and housing advocacy groups filed verified petition for writ of mandate and complaint for declaratory and injunctive relief against charter city, asserting that city policy for sale of surplus municipal property violated Surplus Land Act.

The Superior Court sustained city's demurrer, and denied renters' and advocacy groups' motion for reconsideration. Renters and advocacy groups appealed.

The Court of Appeal held that:

- Actual conflict existed between Act and charter city's surplus land policy;
- State-wide shortage of sites for low- and moderate-income housing was issue of statewide concern;
- State could subject charter city to restrictions in the manner of disposal of surplus land for affordable housing development, and
- Act's affordable housing measures were narrowly tailored to avoid unnecessary interference in the affected local governance, and were reasonably related to statewide concern.

Actual conflict existed between Surplus Land Act and charter city's surplus land policy, where city policy required a certain percentage of units constructed on surplus land be affordable to lower-income renters and moderate-income purchasers while Act required both rental and for-sale units to be affordable to lower income households, city policy on surplus land sold or leased on open market required units be affordable to households earning up to 120 percent of area median income while Act required units to be affordable to lower-income households, and city policy exempted certain projects from any affordability restrictions.

State-wide shortage of sites for low- and moderate-income housing and the regional spillover effect of insufficient housing was issue of statewide concern and demonstrated "extramunicipal concerns" justifying statewide application of Surplus Land Act's affordable housing priorities.

State had more substantial interest in issue of shortage of sites available for affordable housing development than charter city, and thus state could require charter city to prioritize surplus city-owned land for affordable housing development and subject charter city to restrictions in the manner of disposal of that land.

Surplus Land Act's affordable housing measures requiring notice, prioritization, and minimum set-asides at specified affordability levels were narrowly tailored to avoid unnecessary interference in the affected local governance of a charter city, and were reasonably related to state interest in reducing shortage of sites available for affordable housing development; measures applied only when surplus land owned by local government agency was offered for purpose of developing affordable housing and did not interfere with agency's discretion over pricing or sale or lease of surplus land for some other purpose.

