

August 6, 2018

To the Honorable Members of the CA State Senate Appropriations Committee:

Senator Anthony J. Portantino (Chair)	Senator Patricia Bates (Vice Chair)
Senator Jim Beall	Senator Steven Bradford
Senator Jerry Hill	Senator Jim Nielsen
Senator Scott Wiener	

Dear Senate Appropriations Committee Members:

As three of the nine elected Board Members of San Francisco Bay Area Rapid Transit (BART), we write to you to express our strong opposition to Assembly Bill 2923 (Chiu/Grayson), and ask that you join us in opposing the basic concept of this bill.

We represent three BART Districts that include 12 suburban transit stations within the Contra Costa and Alameda communities of Fremont, Union City, Pleasanton, Dublin, Castro Valley, Hayward, Walnut Creek, Pleasant Hill, Lafayette and Concord. This letter contains our dissenting views, from the balance of our BART Board members.

We all agree that BART has many successful Transit Oriented Development (TOD) projects completed, underway and planned. We also agree that TOD is a way to help relieve the Bay Area housing shortage. But, AB2923 is not about whether to build TOD projects on BART parking lots or not. It is about HOW they get built, and who makes the key zoning decisions on parking, density, floor area ratios, and building height. BART has one vision of how to build it, cities and counties often have a different view. To reconcile these differences, the authors of the bill have chosen to present us with a fundamental change in established law by removing jurisdiction over "how to build it" (parking, density, building height, low-income ratios) from community leaders, and give it to us, BART Board Directors who are elected regionally. We believe that the communities lose under AB2923 and here's why:

I. BART's Mission Drift.

Bart's stated mission: Provide safe, reliable clean quality transit services for riders. Our job is transit, not housing. While a major rebuilding of the entire infrastructure has just begun, it will be 15-20 years before completion. AB2923 would serve only to further BART's mission drift by giving BART the unchecked authority to greatly expedite development around stations instead of focusing on rebuilding the transit system, while excluding cities/counties and their elected leaders from the process.

II. AB2923 won't fix the Bay Area's housing/jobs/transportation imbalance, it will worsen.

Suburban BART communities should not shoulder the burden of solving the housing shortage caused by urban San Francisco, Oakland and San Jose's rapid job growth and their failure to plan for housing. Any new legislation should focus instead on the increase of housing inventory in the areas where the

jobs/housing ratio is subpar as in SF, along with incentivizing job growth where jobs/housing ratios are being met in the more suburban areas like Fremont, Livermore, Concord and Brentwood.

BART is at maximum passenger capacity during peak hours and noticeable relief is at least 10 years away, if the funding can be secured. Continuing to build high density housing further out from the job centers with BART's model of parking reductions, will continue to increase transit overcrowding and freeway congestion. That detrimentally affects the quality of life of middle and lower income workers as they must spend longer and longer periods of time on crowded transit and freeways, at the expense of their health and missing valuable milestones in the lives of their families. The quality of life continues to decline in the Bay Area, and this is a key component of it.

III. The very fabric of BART's foundation, a trust and spirit of cooperation between BART and the communities through which it runs, will be destroyed by AB2923.

BART exists and operates by provisions of the Public Utilities Code (PUC) from 1957. The original PUC sec. 29010 and 29011 (still in place today) allowed BART and its Board of Directors broad powers with respect to property transactions including the right to buy, sell, lease and take property by eminent domain as "necessary to the full or convenient exercise of its powers". Sec 29036, also from 1957, provides:

"The board of directors shall refer for recommendation the plans of routes, rights of way, terminals, stations, yards and related facilities and improvements to the city councils and boards of supervisors within whose jurisdiction said facilities and improvements lie and to such other state, regional and local agencies and commissions as may be deemed appropriate by the board of directors. The board of directors shall give due consideration to all recommendations submitted." (emphasis added)

Those PUC sections were written 22 years before the concept of TOD was born, and applied to the running of a railroad, the primary mission of BART.

In 1999, Sec 29010.3 was added to specifically grant BART land use authority for purposes of TOD development. This section specifically mandated that cities and counties would have authority over zoning regulations of BART TOD projects by providing the following in subsection (b)(2):

"Any transit-oriented joint development project created under this section shall comply with the land use and zoning regulations of the city, county, or city and county in which the project is located." (emphasis added)

Further, subsection (c) provided a second reference to city and county authority over BART's TOD activity:

"Notwithstanding Section 29036 or any other provision of law, the authority granted under this section is subject to the land use and zoning regulations of the city, county, or city and county jurisdiction in which the transit-oriented joint development is located, in accordance with the

Planning and Zoning Law (Title 7 (commencing with Section 65000) of the Government Code), relating to zoning.” (emphasis added)

The proposed AB2923 before you will completely change the original and amended intents of PUC Sec 29010, by transferring to our 9-member regional Board of Directors the broad zoning authority previously reserved only for elected leaders of local communities. The BART Board is also given broad unrestricted authority by the bill to change the zoning standards at any time with only a public hearing and Board vote, bypassing the normal city/county processes of general plan changes, EIR's or impact mitigations. BART Board members from urban San Francisco and Oakland will be deciding on the zoning framework of projects in suburban Antioch or Union City.

Can you imagine how much money will be spent by special interests on the elections of BART Board members, who will wield the kind of new power and authority over development granted by this bill?

This broad transfer of powers from cities/counties to BART will destroy the cooperative spirit that BART has enjoyed with its communities and serve to create hostility toward BART by local communities, should BART choose to develop their lands in ways that the community rejects. AB2923 provides BART the final authority in those decisions with no appeal provisions. It is likely to ensure that no other community will vote to allow BART to extend operations into its community in the future.

IV. AB2923 sets a dangerous precedent for special districts throughout California to do the bait and switch on their missions. If this legislation is enacted, every land-owning special district in California will be looking for the same authority over its own lands. Why? Because it is lucrative for special districts to lease land to developers for housing. More housing units in taller denser buildings, means more cashflow to the developer, and to the special district in times of skyrocketing pension costs.

Imagine the landscape of your own community when the sanitation districts, park districts, water districts and cemetery districts come back to you for unfettered authority over development of their own lands because housing is more lucrative than their stated missions. BART's parking lots were purchased with taxpayer dollars for, well... Parking. This bill will turn parking into housing, not what was promised to the taxpayers. By the way, there is still a very high demand for parking in suburban stations.

V. AB2923 is the solution to a non-existent problem. The co-authors of the bill wrote it as the solution to a fabricated problem that BART can't build housing fast enough because it purportedly can't get city approvals. Our BART staff was asked and has provided no such evidence that the cities or counties in our transit District have been a major obstacle in developing housing around transit. In fact, many successful projects have been negotiated and are underway and it has often been environmental regulations, the economy, or BART's own delays that have held up the desired development of certain properties.

In closing, AB2923 doesn't just take away the authority of cities/counties over development and give it to a regional board. It takes away the will of the people and destroys the framework of their communities.

We hope that you will see fit to put an end to this poorly conceived piece of legislation AB2923, that will not produce the housing and traffic congestion relief outcomes promised in Section 1 of the bill. The elected city and county leaders of each community through which BART runs, should retain their constitutionally and legislatively granted authority over zoning standards in their city or county on all property, including that owned by BART. This will help ensure a proper balance of power among government agencies.

Sincerely,



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BART Director
District 1



Tom Blalock
BART Director
District 6



John McPartland
BART Director
District 5