

August 14, 2018

Ms. Jacquie Hoffman, President, Non-Profit Housing Association of Northern California and Board Members

Ms. Amie Fishman, Executive Director, Non-Profit Housing Association of Northern California  
369 Pine Street, Suite 350  
San Francisco, CA 94104

Via email

Dear Ms. Hoffman, Ms. Fishman, and Board members:

We deeply appreciate the efforts of NPH and your members to promote the construction of more affordable and market rate housing in the Bay Area. We are all proud of how the housing we built with your members significantly enhances our communities.

We recognize the need for housing and, in partnership with your members, are taking leadership positions in our communities to approve housing projects for all. While the elimination of redevelopment funds has affected our ability to produce affordable housing, we are adopting and promoting other tools to encourage affordable housing including density bonuses, affordable housing requirements in both for sale and rental units, housing in-lieu and commercial linkage fees, and commitment of public funds to name just a few. Many of our cities have also tirelessly advocated over the years for funding for affordable housing whether it was legislatively or at the ballot box.

Furthermore, we are changing and streamlining our development standards in response to greater demand and changing state law. Each of us has spent many hours supporting affordable housing projects in our jurisdictions. In some cases, approval was easy; in others we worked side-by-side with your members to overcome local objections.

Given our long history of partnership with your members, I hope you appreciate the depth of surprise we felt when we learned about NPH's endorsement of AB2923. As you may know, we do not believe this is a good bill as drafted.

Our objections begin with the premise of the bill—that a regional agency focused on transportation, BART, should be given land use control for activities that are not part of its core mission. Cities and counties have the expertise to plan, entitle, and manage development; BART does not.

We are unsure what problem this bill solves. No housing project proposed by BART has been rejected by any of the jurisdictions we represent. Nothing prevents BART from proposing projects in our jurisdictions and we have long-standing traditions of cooperating with BART and you.

Rather than enumerate our concerns in detail here, we are attaching a letter from three BART directors whose districts are greatly affected by this bill and who unanimously oppose AB 2923, a letter of opposition from the American Planning Association, and an op-ed that many of us

jointly submitted to the East Bay Times on July 29 that explains our concerns. All of us are encountering substantial opposition to the bill from our constituents.

We request that NPH and the member organizations withdraw their support for AB2923 and, instead, support legislation that would require BART and the cities/counties with BART stations to consult at least annually on station-area planning and development and on how to facilitate the production of TOD projects with affordable housing. We believe that will make a better contribution towards developing needed housing in our jurisdictions and throughout Northern California.

Best regards,

Scott Haggerty, Supervisor, Alameda County

Karen Mitchoff, Chair, Board of Supervisors, Contra Costa County

Candace Andersen, Supervisor, Contra Costa County

Diane Burgis, Supervisor, Contra Costa County

Trish Herrera Spencer, Mayor, Alameda

Peggy McQuaid, Mayor, Albany

Michael Barnes, Council Member, Albany

Sean Wright, Mayor, Antioch

Lori Ogorchock, Council Member, Antioch

Tony Tiscareno, Council Member, Antioch

Monica Wilson, Council Member, Antioch

Bob Taylor, Mayor, Brentwood

Karen Rarey, Council Member, Brentwood

Claudette Staton, Council Member, Brentwood

Keith Haydon, Mayor, Clayton

Julie Pierce, Council Member, Clayton

Jim Diaz, Council Member, Clayton

Edi Birsan, Mayor, Concord

Carlyn Obringer, Vice Mayor, Concord

Newell Arnerich, Mayor, Danville

Robert Storer, Vice Mayor, Danville

David Haubert, Mayor, Dublin

Melissa Hernandez, Vice Mayor, Dublin

Lily Mei, Mayor, Fremont

Rick Jones, Council Member, Fremont

Barbara Halliday, Mayor, Hayward

Don Tatzin, Mayor, Lafayette

Cameron Burks, Vice Mayor, Lafayette

Mark Mitchell, Council Member, Lafayette

John Marchand, Mayor, Livermore

Bob Carling, Council Member, Livermore

Rob Schroder, Mayor, Martinez

Dave Trotter, Mayor, Moraga

Sue Higgins, Council Member, Oakley

Amy Worth, Mayor, Orinda

Inga Miller, Vice Mayor, Orinda

Darlene Gee, Council Member, Orinda

Pete Longmire, Mayor, Pittsburg

Sal Evola, Vice Mayor, Pittsburg

Jelani Killings, Council Member, Pittsburg

Tim Flaherty, Mayor, Pleasant Hill

Ken Carlson, Vice Mayor, Pleasant Hill

Michael Harris, Council member, Pleasant Hill

Sue Noack, Council Member Pleasant Hill

Matt Rinn, Council Member, Pleasant Hill

Jerry Thorne, Mayor, Pleasanton

Arne Olson, Vice Mayor, Pleasanton

Karla Brown, Council Member, Pleasanton

Kathy Narum, Council Member, Pleasanton

Jerry Pentin, Council Member, Pleasanton

Tom Butt, Mayor, Richmond

Pauline Cutter, Mayor, San Leandro

Bill Clarkson, Mayor, San Ramon

Philip O'Loane, Vice Mayor, San Ramon

Scott Perkins, Council Member, San Ramon

Harry Sachs, Council Member, San Ramon

Genoveva Calloway, Mayor, San Pablo

Cindy Silva, Mayor Pro Tem, Walnut Creek

Rich Carlston, Council Member, Walnut Creek

Loella Haskew, Council Member, Walnut Creek

Kevin Wilk, Council Member, Walnut Creek

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,



Debora Allen  
BART Director  
District 1



Tom Blalock  
BART Director  
District 6



John McPartland  
BART Director  
District 5



American Planning Association  
**California Chapter**

*Making Great Communities Happen*

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MEMO TO: SENATE GOVERNANCE & FINANCE COMMITTEE

FROM: AMERICAN PLANNING ASSOCIATION

DATE: JUNE 25, 2018

SUBJECT: **AB 2923 (CHIU) – NOTICE OF OPPOSITION**  
OVERRIDING LOCAL ZONING ON BART PROPERTY  
IN SENATE GOVERNANCE & FINANCE COMMITTEE  
WEDNESDAY, JUNE 27TH

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The American Planning Association, California Chapter (APA California) must respectfully continue to oppose AB 2923 as proposed to be amended. APA understands that the bill will be significantly amended soon. **However, even as to be amended, this bill would take away local land use authority over BART station properties from cities and counties and hand it over to the BART Board. The bill gives every incentive for BART to maximize its land value regardless of the impacts on surrounding properties.**

The sponsors of the bill believe that this major departure from historical land use law is warranted because the BART Board is an elected board. However, there are thousands of elected boards for all kinds of special districts and other entities throughout California. AB 2923 will set up the Legislature to be the arbiter in the future over which boards should be given a city's or county's land use authority. **Apparently, several special districts are already interested in the same land use authority that this bill gives to BART. The state should not be advocating for competing planning entities subject to totally different rules.**

The sponsors also believe that cities and counties that currently have land use authority over BART's non-transit development have not done enough to increase affordable housing, density, and mixed-use development on these properties. In reviewing the city and county TOD plans for these BART stations however, that does not appear to be the reality – in fact the density and height allowances in several TOD plans covering BART property would allow higher density, taller structures, and more affordable housing than is in BART's current guidelines. To the extent there are jurisdictions that have not updated their TOD plans or completed a station plan, **rather than just handing over land use authority, APA suggests that the Legislature amend the TOD and Station Plan statutes. These statutes could be amended to require TOD updates that include minimum standards applicable to BART as well as other fixed rail stations around the state and require the updates with those new minimum standards to be completed by the city or county within the next few years.**

C/O STEFAN/GEORGE ASSOCIATES  
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Specifically, as proposed to be amended, the bill would require that the BART Board adopt by ordinance new transit-oriented development (TOD) zoning standards that establish minimum local zoning requirements for BART-owned land within ½ mile of an existing or planned BART station entrance. **It would then require the affected local jurisdictions to adopt a local zoning ordinance that conforms to the TOD zoning standards – exactly as adopted by BART - within 2 years of the date the zoning standards are adopted by the BART Board.** It designates that the BART Board would be the lead agency under CEQA for the zoning standards.

**The new amendments also include provisions that are incredibly difficult to understand and are not consistent with normal local planning terms or structure:**

- It requires the new zoning ordinance standards to be adopted by July 1, 2020, but then allows BART to avoid completing the standards indefinitely putting the BART Guidelines in place instead. The Guidelines are not zoning standards, are very long, detailed and confusing and will be difficult for cities and counties to adopt in an ordinance.
- It requires a temporary FAR to be calculated for each station type by multiplying the number in a column in the Guidelines titled “residential target height” by 0.6.
- It ties the requirement for cities and counties to conform with the new zoning ordinance standards or presumably the Guidelines on whether district ridership is below 200,000 daily weekday riders on average for at least three consecutive calendar years.
- It requires cities and counties to conform their zoning standards to the BART standards, or the Guidelines, in 2 years, but then says local zoning will remain in place unless the district determines that it is inconsistent with the standards or the Guidelines.
- It then says a jurisdiction may update zoning to comply with the standards or Guidelines until such time that the district enters into an exclusive negotiating agreement with a developer for TOD. Then what?
- It uses terms applicable to the requirements and interactions with BART for cities and counties such as “in the midst of a CEQA review”, “if it is clear what the preferred zoning standards are”, “follow the spirit of the local jurisdiction’s proposed zoning standards”, and zoning standards that “do not resolve inconsistencies”.
- It sets up a hybrid, confusing alternative to SB 35 for BART projects, and allows the district to “waive any requirement that it finds to be inconsistent” with SB 35’s objective planning standards.
- It changes CEQA law for BART TOD projects.

APA California believes the approach in AB 2923 will set a troubling precedent for further diminishing of local land use planning in future legislation. This bill would override local planning efforts including longstanding General Plan land use plans in built out communities, Housing Elements certified by HCD, Sustainable Communities Strategies, development agreements, specific plans, and Transit Oriented Developments. And it does not require BART to meet the same standards for communication and consultation, management of contextual issues arising with surrounding properties, and environmental controls that cities and counties are required to implement.

APA California understands and supports the goal of increasing the number of new multifamily housing units around transit stops – it is one of APA’s principles to support

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density, affordability and inclusive communities near transit and throughout the community. APA California is willing to work with the author and sponsors to craft legislation to increase density around BART transit stops using approaches like minimum density and affordability standards or Station Area plans as suggested. **However, APA cannot support a bill that begins to eliminate or otherwise diminishes local land use planning through an arbitrary and inflexible zoning standard made up by BART, and applicable to its own properties.**

If you have any questions, please contact our lobbyist, Sande George, with Stefan/George Associates, [sgeorge@stefangeorge.com](mailto:sgeorge@stefangeorge.com), 916-443-5301.

cc: Governor's Office  
Senate Governance & Finance Committee  
OPR  
Republican Caucus

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**BREAKING NEWS** One person dead after shooting on Bay Bridge; all lanes back o

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## Con: Legislation would undermine city and county control



'We endorse policies that help BART support rather than co-opt local efforts to develop housing'



(Laura A. Oda/Bay Area News Group)

Construction in February of new housing and retail across from the MacArthur BART station in Oakland.

By **LILY MEI AND DON TATZIN** |

PUBLISHED: August 4, 2018 at 8:30 am | UPDATED: August 4, 2018 at 10:49 am

We face a housing shortage. Prices are too high, areas that create jobs offer insufficient housing, and commutes are too long. We, our families and our residents feel the stress, and we are concerned about our residents' quality of life.

Assembly Bill 2923 purports to address the housing problem by giving BART total zoning control over BART-owned land in Alameda, Contra Costa and San Francisco counties. BART could override local city or county zoning and adopt its own zoning standards — standards that increase densities and heights for residential development. Additional land BART acquires would be zoned following BART's rules. Parking might not be replaced.

As written, AB2923 has numerous flaws:

**Offers no guarantees that housing will be built faster or better.** Residential development planning and approval should continue to reside with cities and counties and their residents. Cities and counties, not BART, possess expertise in land development and assessing impacts on roads, utilities, services, parks and schools.

**Reduces local input.** The bill requires BART to hold a public hearing to adopt the new zoning standards, but there is no requirement for BART to hold hearings in our communities. Transparency is critical, and your voices must be heard.

**Ignores the success of recent transit-oriented development.** Cities and BART already cooperate to build housing. For example, Fremont listened to local stakeholders and created a vibrant BART-oriented mixed-use and mixed-income community relatively quickly. Under existing rules, thousands of residential units, including affordable units, that adhere to local guidelines and BART's goals have been planned, approved and built, often without BART involvement. No residential project proposed by BART has been rejected.

**Allows BART to eliminate customer parking.** AB2923 allows BART to re-develop parking lots with housing but does not require BART to replace customer parking. Where will BART riders park?

**Expands BART's "job" beyond transportation.** BART's primary mission is to provide affordable, reliable, clean and safe transit service. Voters supported new taxes to replace BART's fleet, upgrade the train control system, improve stations and replace aging infrastructure. This work requires decades to complete and necessitates the full dedication of BART's board and management. BART does not need new challenges outside of its expertise.

**Prioritizes developer profits and BART revenue from land ownership over current riders.** The math is simple: BART reaps significantly more from leasing land for residential development than by providing rider parking.

**Allows BART to acquire property using eminent domain and purchases – and invites speculation.** Why should BART and developers reap financial benefits at a cost to BART users? Further, allowing BART to "take" land on behalf of developers creates uncertainty for tenants and property owners due to speculation.

**Fails to address the East Bay's need for more jobs.** To reduce commute times and promote reverse commute transit ridership, the East Bay needs permanent jobs, which this bill does little to create. Furthermore, the bill allows essential employment and retail centers to be converted to housing.

What can you do? Legislators throughout the state need to hear from residents and businesses regarding this bill. Silence implies consent.

The bill should be defeated as written. We endorse policies that help BART support rather than co-opt local efforts to develop housing. Cities and counties already build housing close to BART. BART does not have a better "track" record than they do.

*Lily Mei is mayor of Fremont. Don Tatzin is mayor of Lafayette. Other signatories include Supervisor Scott Haggerty, Alameda County; Supervisor Karen Mitchoff, Contra Costa County; Mayor Peggy McQuaid, Albany; Mayor Edi Birsan, Concord; Mayor Newell Arnerich, Danville; Mayor David Haubert, Dublin; Mayor Barbara Halliday, Hayward; Mayor John Marchand, Livermore; Mayor Tom Butt, Richmond; Mayor Sean Wright, Antioch; Councilman Salvatore Evola, Pittsburg; Councilman Michael Harris, Pleasant Hill; Councilman Philip O'Loane, San Ramon; Councilwoman Cindy Silva, Walnut Creek.*