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# California State Senate

SENATOR  
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SEVENTH SENATE DISTRICT



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Dear Assemblymembers Chiu and Grayson,

I want to start by thanking you both for your continued work to increase the supply of housing in California. I would also like to thank you and your staff for your constant engagement on this bill. I appreciate you listening to the cities in my district and taking amendments that address some of their concerns. Unfortunately, I write to inform you that many issues remain with AB 2923. This letter highlights five of them. In summary, AB 2923 presupposes a problem that does not exist; it sets a dangerous precedent by granting land use authority to a special district; it promotes collusion between developers and Bay Area Rapid Transit District (BART) to undermine local control; it restricts public access to decision makers; and it fails to account for many of the factors that make building housing difficult.

## ***AB 2923 Does Not Identify a Problem***

First, AB 2923 fails to identify a problem that warrants legislative intervention. This bill assumes that there is a problem that needs to be solved: that cities have refused BART requests for housing project approval. This assumption ignores the fact that cities in my district have approved thousands of units of housing near their BART stations, even though BART has not tried to build housing on the property it owns.

As you can see in the chart below, BART has not had any applications for development near its stations rejected in the past ten years. In fact, BART has not even submitted applications to build development on property it owns.<sup>1</sup> With the information I collected from my cities, along with discussions with your office, I have also found that BART has at times even declined requests from cities to build housing on its property. It would be premature and unfair for the Legislature to change local development rules and give BART new power over local land use decisions until BART begins submitting applications for development and sees those applications rejected.

Furthermore, the cities in my district are not waiting idly for BART to step up. Instead, they have approved thousands of privately sponsored housing units in Transit Oriented Development (TOD) near their BART stations.

In the last ten years, for example, the City of Concord has entitled 2,500 housing units within a half mile of the Downtown Concord BART station and 4,400 units within a one mile radius of the station. At the North Concord/Martinez station, the City has worked with the Navy, BART,

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<sup>1</sup> If you need more information on this survey, I can provide that to your offices.

developers, and community members to decide how best to redevelop the former Naval base that borders the station.

The City of Walnut Creek has been a regional leader in building TOD around its BART station. Within the last ten years, 950 units have been constructed within a half mile of the Walnut Creek BART station, with an additional 925 units under construction and 150 in the entitlement process. Walnut Creek has also prioritized securing funding for housing and minimizing homelessness in our region. The City has collected \$19.7 million in housing impact, in-lieu, and commercial linkage fees since 2010. The city has constructed five 100% affordable housing developments which include 168 affordable rental units and 10 ownership units. The City also has three 100%, affordable developments underway that include 103 rental and 42 ownership units. It is true that the development around the Walnut Creek BART station was stalled for several years, but that was due to the recession and other problems not associated with the entitlement process.

In the City of Pittsburg, the City has put zoning in place to encourage development around both of its BART stations. In the case of the Pittsburg-Bay Point BART Station, the City approved a Master Plan in 2011 that gives a road map for development of 1,168 residential units on 50 acres in the immediate area of the BART station, including 252 high-density units on nearly four acres owned by BART closest to the station. To date, BART has not approached the City to develop its land (3.45 acres) despite the City developing a master plan that would expedite development for BART. In contrast, in the 20 years since the station opened, private developers have constructed 1,250 units of multi-family and single family housing surrounding the station, adding to the 1,100 in residential units constructed in the decade prior. In 2009, the Pittsburg City Council adopted the Railroad Avenue Specific Plan with a vision for land use and transportation circulation within a half mile radius of the Pittsburg Center BART transit hub. Approximately 1,600 housing units already exist within the radius, and the Specific Plan creates a land use and policy framework for up to 1,845 additional residential units and approximately 988,000 square feet of commercial space. BART has not offered any comments or suggestions throughout this process to date.

At the Owens Drive BART station in the City of Pleasanton, the City approved rezoning to allow for the construction of up to 1,115 multi-family units near the station. Essex 1 and 2 were built in 2015-17, creating 506 multi-family units which are directly across from the station on Owens Drive. A 304-unit project near this station was recently approved, but has not yet been constructed. There is also a BART surface parking lot at this station that is zoned for 249 units, but BART has not brought a project forward to build this housing. At the Stoneridge site, Pleasanton approved a BART project for Multi-Family Development to be built. The developer ended up pulling out of the deal when the recession hit. When the opportunity came for the Workday campus to be constructed on that site instead of multi-family housing, Pleasanton wanted to move forward with building housing, but BART signed a 99-year lease with Workday instead.

*Status of BART Applications for Development in SD-7*

<b>BART Stations in SD-7</b>	<b>BART Development Applications Submitted</b>	<b>BART Development Projects Denied</b>
<b>Antioch</b>	0	0
<b>Concord</b>	0	0
<b>Dublin/Pleasanton</b>	0	0
<b>Lafayette</b>	0	0
<b>North Concord/Martinez</b>	0	0
<b>Orinda</b>	0	0
<b>Pittsburg/Bay Point</b>	0	0
<b>Pittsburg Center</b>	0	0
<b>Walnut Creek</b>	0	0
<b>West Dublin/Pleasanton</b>	0	0

Figure 1: This table displays the number of applications BART has submitted to each city for development on its property near stations and the times the district was denied over the past ten years.

***AB 2923 Sets a Dangerous Precedent for Special Districts***

Second, AB 2923 sets a dangerous precedent by giving land use authority to a special district. There are 4,000 other special districts across the state that can use the precedent set in this bill to override the local entitlement process. This bill is certain to prompt future legislation that grants land use authority to some of them, especially transit agencies similar to BART.

Some examples of these include Metrolink and Metro Rail, which operate through much of Southern California, and SMART in Sonoma and Marin County. Metrolink, which operates throughout Los Angeles, Orange, Riverside, San Bernardino, Ventura, and San Diego Counties, is an example of an agency that could be granted the power to up-zone near every one of its stations without local input. The same would be true for Metro Rail, which touches nearly every corner of Los Angeles County from Pasadena and the San Fernando Valley, through central Los Angeles and even west toward Santa Monica. SMART in Sonoma and Marin County could also be granted land use authority to up-zone at every one of its stations.

*Expanded Transit Land Use Authority Could Effect These Cities*

<b>Transit Agency</b>	<b># of Cities in Jurisdiction</b>	<b>Prominent Cities/Neighborhoods in Jurisdiction</b>	<b>Counties Touched by Transit Agency</b>	<b># Stations</b>
<b>Metrolink</b>	Approximately 45 (With more stations coming in the near future)	San Diego, Sun Valley, Covina, El Monte, Arcadia, Irwindale, Northridge, Chatsworth, Simi Valley, Pomona, Fontana, Montclair, Ontario, Riverdale, Riverside, Parris, Corona,	Los Angeles, Orange, Riverside, San Bernardino, Ventura, San Diego	62
<b>Metro Rail</b>	Approximately 30 (With more stations coming in the near future)	Azusa, Pasadena, Santa Monica, Long Beach, Hollywood, Culver City, Ladera Heights, Westmont, Crenshaw, East LA, Beverly Hills, Westwood, Inglewood	Los Angeles	93
<b>SMART</b>	10 (With more stations coming in the near future)	San Rafael, Novato, Petaluma, Sonoma, Rohnert Park, Sebastopol, Santa Rosa, Windsor, Healdsburg, Colverdale	Marin, Sonoma	10

Figure 2: This table looks at other comparable transit agencies across the state and reveals the scope of impact this bill would have on their respective communities if it applied to them.

***AB 2923 Promotes Collusion with Unresponsive Developers***

In some situations, AB 2923 would promote collusion between developers and BART to undermine local land use authority in certain situations. While the bill may appear to grant new authority only to BART, in practice the law could be used by private developers to circumvent local control. A developer unhappy with a community’s decision on a project could form a private-public partnership with BART to take advantage of BART’s new powers, bypassing city project approval.

AB 2923 permits BART to purchase land adjacent to its current property as long as the property purchased does not exceed 10% of the total size of the existing property and is used only for a TOD project on the existing property within a half mile of a BART station. The bill also provides that the majority of the project must be on existing property.

As long as the developer complies with the aforementioned guidelines, nothing in the bill prevents a developer from selling its land to BART and then having BART zone the land to the developer’s specifications.

## ***AB 2923 Restricts Public Access to Decision Makers***

AB 2923 also undermines local community input. Although the process of entitling projects requires time, it allows community residents to have their voices heard so that their livelihoods are not negatively impacted by development. This bill requires BART to hold public hearings for proposed projects at its Oakland headquarters, but it is unreasonable to expect concerned residents of a city where a project is being proposed to have the same kind of access to these meetings as they would a meeting in their community. BART's new land use powers would overwhelm the voice of the local community with decisions being made far away in BART's headquarters with little or no public input.

## ***The Multiple Barriers to Building Housing***

California's housing market is complex and cannot be reduced to inappropriately usurping local control to fix the supply problem. In many occasions, economic conditions prevent projects from moving forward, as was the case for the City of Walnut Creek. Other times projects do not pencil out because of the growing cost of purchasing land and materials, which can offset the desire to build. California's labor shortage has also forced developers to compete for the shrinking amount of skilled workers that still exist in the state. All of these market factors, and others, ultimately drive up the cost of housing to the point where those units cannot be profitably built. This bill might view local control as the main obstacle to housing construction, but in many cases other barriers are preventing developers from building more housing near BART stations.

## ***AB 2923 is not the Answer***

I fundamentally believe that the California Constitution vests land use authority in California's local government, through the police power, for good reason. Cities and counties understand the context of their decision making and are best equipped to act in ways they find is suitable for their residents and the region. Three of BART's Board Members who represent the cities of my district have written a letter agreeing with this view and arguing that AB 2923 is an unsubstantiated overreach.

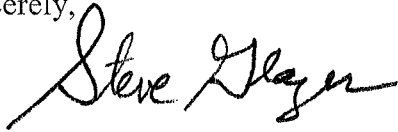
While building housing on BART-owned land might often be the wise choice, it is not always the answer. For example, if BART builds on a surface area parking lot that is used by commuters in the region, it might cause more traffic and gridlock as people who cannot find a place to park return to their vehicle commute. Local government representatives, who live and work among their constituents, understand these trade-offs, and their land-use decisions are more likely to reflect them.

What we have learned is that the process of building housing can sometimes be cumbersome, especially when considering economic factors, but the fact remains that local governments are the most suitable forums to consider and approve housing. In recent years, the Legislature has passed several bills that change the way cities conduct their planning process and approve housing projects. Rather than passing yet another law to circumvent local control, the Legislature should at least wait to see the impact of the new laws just passed.

I think there are ways to improve this process and incentivize cities and developers to collaborate on building more housing, including finding additional sources of revenue to support the

construction of affordable housing. I am also open to speeding up the regulatory process for housing construction, most notably with CEQA streamlining. There is room for cooperation on solutions that can guarantee a larger housing stock. We should work with cities to build more housing, but AB 2923 unfortunately provides a solution to a problem that does not exist or is not of the cities making.

Sincerely,

A handwritten signature in black ink that reads "Steve Glazer". The signature is written in a cursive style with a large, prominent "S" at the beginning.

**STEVEN M. GLAZER**  
Senator, 7<sup>th</sup> District