

Date of Hearing: April 18, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
AB 2923 (Chiu and Grayson) – As Amended April 11, 2018

**SUBJECT:** San Francisco Bay Area Rapid Transit District: transit-oriented development.

**SUMMARY:** Requires the San Francisco Bay Area Rapid Transit District (BART) to adopt transit-oriented development (TOD) zoning standards on specified parcels of land it owns, and requires affected cities and counties to update zoning to be consistent with BART's zoning standards within two years. Specifically, **this bill:**

- 1) Allows, notwithstanding any other law, the BART board of directors (board) to adopt transit-oriented development (TOD) zoning standards by a majority vote at a duly noticed public meeting that establish minimum local zoning requirements for BART-owned land that is located on contiguous parcels larger than 0.25 acres, within one-half mile of an existing or planned BART station entrance, in areas having representation on the BART board.
- 2) Requires zoning standards published in the current BART Guidelines to serve as the baseline for BART TOD zoning. Specifies that approved TOD zoning standards shall establish the lowest permissible height limits, lowest permissible density limits, and the highest permissible parking maximums, as established by Table 1 and Figure 1 of BART TOD Guidelines (2017).
- 3) Requires the board to establish and include the lowest permissible floor-area-ratio limits for each TOD place type, in approving the TOD zoning standards.
- 4) Requires the TOD zoning standards to be approved by the board by April 1, 2019, and allows them to be amended by the board thereafter, as specified. Specifies that if the board fails to approve new guidelines by April 1, 2019, the existing Table 1 of BART TOD GUIDELINES (2017) shall serve as the minimum local zoning requirements for local jurisdictions, with the Transit Oriented Place Types indicated in Figure 1 of the BART TOD Guidelines (2017).
- 5) Requires the approval of, and amendments to, the TOD zoning standards, to comply with all of the following:
  - a) The board shall hold a public hearing to receive public comment on the proposed TOD zoning standards or proposed changes to the TOD zoning standards. Requires BART to conduct direct outreach to communities of concern;
  - b) BART shall provide public notice and make the draft guidelines available to the public not less than 30 days before a public hearing of the board to consider the TOD zoning standards; and,
  - c) The board shall approve or reject any proposed TOD zoning standards at a publicly noticed meeting of the board not less than 30 days following the original public hearing.

- 6) Requires, before or at the same time as approving TOD zoning standards, the board to approve travel demand management requirements for TOD projects on district-owned real property.
- 7) Requires, where local zoning is inconsistent with the TOD zoning standards, the local jurisdiction to adopt an ordinance that approves the application of the TOD zoning standards within two years of the date that the TOD zoning standards were approved by the board.
- 8) Requires the local zoning ordinance to conform to the TOD zoning standards without the application of any bonuses or waivers allowable under any state or local density bonus provisions.
- 9) Requires the board to make a finding as to whether the local zoning ordinance is consistent with the TOD zoning standards. Specifies that the local zoning shall remain in place unless the board determines that it is inconsistent with TOD zoning standards.
- 10) Requires, if, according to the board's finding, the local zoning ordinance remains inconsistent with the TOD zoning standards after the two-year period specified in 7), above, the TOD zoning standards to become the local zoning standards for any BART-owned land within one-half mile of any existing or planned BART station entrance in areas represented on the board. Allows a jurisdiction to update zoning to comply with TOD zoning standards until such time that a BART TOD developer enters into the development process.
- 11) Specifies that the board's approval of TOD zoning standards and local zoning standards shall be subject to the California Environmental Quality Act (CEQA). Requires the board to serve as the lead agency for CEQA review.
- 12) Allows a TOD development proponent to submit an application for a development that is subject to the streamlined, ministerial approval process not subject to a conditional use permit if the development satisfies the objective planning standards specified in SB 35 (Wiener), Chapter 366, Statutes of 2017, that are consistent with the BART TOD zoning standards. Specifies that the streamlining provisions do not apply to a development located in a jurisdiction where the market rate and affordable housing obligations in the regional housing needs assessment (RHNA) have been met.
- 13) Requires the board to ensure that any otherwise applicable local design review guidelines are included in a development agreement with a TOD developer.
- 14) Requires a TOD developer to adhere to any applicable local design guidelines insofar as those guidelines do not prohibit the minimum density allowances required by the TOD zoning standards.
- 15) Provides that in the event that TOD zoning standards, objective planning standards, general plan, or design review standards are mutually inconsistent, that the TOD zoning standards shall be the controlling standards.
- 16) Requires, to the extent that the zoning standards do not resolve inconsistencies, that the general plan be the controlling standard.

- 17) Allows the board to waive any requirement that it finds to be inconsistent with Section 65913.4 of the Government Code, which is the section of SB 35 (Wiener) that allows a development proponent to submit an application for a development that is subject to the streamlined, ministerial approval process if specified objective planning standards are met.
- 18) Requires the board to take specified actions to avoid the loss of affordable housing units and to prevent the direct displacement of tenants, as specified.
- 19) Requires a TOD project to do both of the following:
  - a) Include at least a 20-percent minimum of the affordable residential housing units for very low-, low-, and moderate-income households and subject to a recorded affordability restriction for at least 55 years with a priority on residential units for very low-, low-, and moderate-income households; and,
  - b) Comply with the labor requirements of Section 65913.14 (SB 35) and any other applicable BART labor policies.
- 20) Allows the board to identify specific TOD projects that are in the approval process with a local jurisdiction on or before imposition of the TOD zoning standards adopted pursuant to 1), through 3), above, that are proceeding with local zoning authority and entitlement pursuant to existing local zoning authority.
- 21) Requires reimbursement to local agencies to be made, as specified, if the Commission on State Mandates determines that this act contains costs mandated by law.

**EXISTING LAW:**

- 1) States, pursuant to Article XI, Section 7, of the California Constitution, that a city or county may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- 2) States, pursuant to Article XI, Section 5, of the California Constitution, that it shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters that shall be subject to general laws. States that city charters adopted pursuant to the Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state-mandated local program.

**COMMENTS:**

- 1) **Bill Summary.** This bill requires the BART board to establish TOD zoning standards for mixed-use housing on BART-owned land within ½ mile of an existing or planned BART station in areas represented on the BART Board (currently Alameda, Contra Costa, and San Francisco Counties). The board would serve as lead agency for CEQA review of these standards. Within two years of the date that the Board adopts the TOD zoning standards, jurisdictions with zoning authority (meaning a city or county) would be required to update

local zoning on BART-owned land to be consistent with these TOD zoning standards. Any CEQA review of rezoning and subsequent TOD projects must incorporate the Board's CEQA review to the greatest degree possible.

The bill requires BART to make a finding as to whether the local zoning ordinance is consistent with the TOD zoning standards, and specifies that local zoning shall remain in place, unless the board determines that it is inconsistent with TOD zoning standards. If, according to the board's finding, the local zoning ordinance remains inconsistent with the TOD guidelines after the two-year period, the BART TOD zoning standards shall become the local zoning standards for any BART-owned land within one-half mile of any existing or planned BART station entrance in areas represented on the board. The bill allows a city or county to update zoning to comply with TOD zoning standards, until such time that a BART TOD developer enters into the development process.

The bill also allows residential mixed-use projects on BART land that satisfies local zoning standards to be eligible for ministerial approval processes in existing law, as established by SB 35 (Wiener) of last year, regardless of a jurisdiction's progress in meeting its share of the Regional Housing Needs Allocation (RHNA). The bill requires at least 20% of the residential units constructed within each TOD project to be affordable to very low-, low-, and moderate-income households and be subject to a recorded affordability restriction for at least 55 years. Prevailing wage and skilled and trained workforce requirements apply, as well as any other applicable BART labor policies.

This bill is co-sponsored by the Non-Profit Housing Association of Northern California and the State Building and Construction Trades Council.

- 2) **Author's Statement.** According to the author, "To play its part in fulfilling state and regional goals, BART recently passed a progressive and ambitious TOD policy. BART committed itself to fully building out the land it owns around its stations by 2040 to produce over 20,000 new units of housing, of which 7,000 will be affordable, and 4,500,000 sq. ft. of office and commercial space, including child care and educational facilities. The success of BART's TOD policy is essential to meeting the Bay Area's housing needs, reducing the Bay Area's greenhouse gas emissions and criteria pollutants, reducing crippling congestion on Bay Area roads, and providing much needed affordable housing to low-income residents with direct, reliable, and affordable transportation connections to jobs and services.

"Unfortunately, BART cannot fully deliver on some of its most promising TOD opportunities. Historically, TOD projects have taken too long - often more than a decade - with jurisdictions demanding less housing and too much parking for transit adjacent development. These factors have increased project costs while reducing project benefits and affordability. As a result, BART has not proposed TOD on many of its opportunity sites.

"AB 2923 will help expedite the production of well designed, mixed-use development adjacent to transit. TOD projects will in turn increase transit ridership, reduce congestion and greenhouse gas outputs, and sustainably accommodate new growth."

- 3) **BART.** BART is a rapid public transit system that connects the San Francisco Peninsula with Oakland, Berkeley, Fremont, Walnut Creek, Dublin/Pleasanton and other cities in the East Bay. For more than 45 years BART has provided transportation to downtown offices, shopping centers, tourist attractions, entertainment venues, universities and other destinations

for Bay Area residents and visitors alike. BART has over 112 miles of track, and 46 stations (four of these are combined with MUNI Metro stations and one is combined with CalTrain), and a number of other stations in the pipeline for development.

BART has its own statutes contained in the Public Utilities Code, which provide for the structure of the governing board, and the powers and duties of the district. The BART statutes specify that the board shall determine what transit facilities should be acquired or constructed, and allows BART to establish zones within the district to undertake the acquisition or construction of any transit facilities. The board regulates such facilities, including the fixing of rates, rentals, and charges, and the marking and enforcement of rules, regulations, practices and schedules, in connection with any transit facility owned or controlled by the district. BART is also authorized to maintain a police department and establish an office of independent police auditor.

BART is also authorized to use eminent domain to acquire property, and can also dispose of property when it is in the best interest of the transit system. BART can also take by gift, or take and convey by grant, purchase, devise or lease, and hold and enjoy, real and personal property of every kind within or without the district that is necessary for transit-oriented joint development projects on property within ½ mile from the external boundaries of a BART facility to use for TOD.

- 4) **BART TOD Guidelines.** BART recently released a publication on its Transit-Oriented Development Guidelines, dated May 2017. As stated in the introduction of that document:

*In BART's three decades of experience in the development of property, BART's Transit-Oriented Development (TOD) program has continued to evolve. TOD has become a prominent fixture in the Bay Area's future propelled in part by a tailwind of rapidly-growing transit ridership; shifting consumer-housing preferences and business location decisions in support of transit rich locations; supportive state, regional and local government plans; and favorable real estate market trends.*

*In light of the changes in the Bay Area including adoption of aggressive greenhouse gas reduction targets, a growing housing affordability crisis, and the loss of Redevelopment as a tool to support infill development, the BART Board adopted a new TOD policy in June 2016.*

*The TOD Policy was followed by adoption of performance targets in December 2016 that greatly increase the pace and scale of BART's TOD projects, and set new goals for growth envisioned within the half mile station area....To achieve these targets and implement the new policy, these Guidelines are intended to clearly articulate BART's process for development, and expectations for station area planning.*

The May 2017 Guidelines document also talks about the shifting market demand for TOD, and specifies that “TOD projects on BART land will meet a minimum net residential density standard of 75 units per acre, reduce auto use by lowering parking requirements below one space per unit on average and 1.6 spaces per 1,000 square feet of office space, and strive to provide incentives to take transit, bike and walk. At some stations, BART will seek to replace park and ride lots with TOD, in concert with station area access improvements guided by BART's Station Access Policy.”

- 5) **Constitutional Land Use and Zoning Powers for Cities and Counties.** The California Constitution, pursuant to Article XI, Section 7, states that a city or county may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws (special districts do not have land use authority). This power is often referred to as the “police power” and the courts have held that “It is from this fundamental power that local governments derive their authority to regulate land through planning, zoning, and building ordinances, thereby protecting public health, safety and welfare.”

One way that cities and counties use this authority is through zoning, which is the division of a city into certain types of “districts” and the application of different regulations in each “district” – like commercial, industrial or residential zones. Zoning ordinances generally fall into two categories: (1) Those that regulate the height or bulk of physical structures within certain designated districts; and, (2) Those that prescribe the use by which buildings within certain districts may be put. In general, the Legislature has given cities maximum control over zoning matters while ensuring uniformity of, and public access to, zoning and planning hearings.

Zoning ordinances must be reasonably related to the public welfare. In order to change a zoning ordinance, there are two ways to amend: a) Reclassification of the zoning applicable to a specific property, designating a change from one district to another district – known as “rezoning;” and, b) Changes in the permitted uses or regulations on property within particular zones or citywide. The first type of amendment usually involves a change in the zoning map, without any change in the text of the zoning ordinance; the second type of amendment usually involves amending the text of the ordinance and not the map. Zoning ordinances must be consistent with the general plan and any applicable specific plan.

Both of the ways to amend zoning ordinances mentioned above are considered “legislative acts” and are not administrative or quasi-judicial in nature. State zoning law requires both a hearing before the planning commission, if there is one, and a hearing before the city council prior to the enactment of certain amendments to zoning ordinances. There are also minimum due process standards required in conducting those hearings so that the public can participate.

- 6) **Home Rule and Charter Cities.** The California Constitution authorizes both general law and charter cities to: a) make and enforce all local laws and regulations not in conflict with general state laws; b) establish, purchase, and operate public works and utilities or franchise to do so; and, c) be free from state legislation delegating to a private person or body control over city property, funds, tax levies, and municipal functions.

Cities with voter-approved charters have additional home rule authority over their municipal affairs, police, subgovernments, city elections, and their elected and appointed city officials and employees. The provisions of a city charter and ordinances adopted by a charter city prevail over general state law in areas that a court determines are municipal affairs. As to matters of statewide concern, however, charter cities remain subject to state law. Whether a charter city may act independent of state general law in a particular domain depends upon a court’s determination of whether it is a municipal affair or a matter of statewide concern.

The affected parcels list provided by the author’s office includes BART-owned parcels in the Cities of Berkeley, El Centro, Hayward, Oakland, San Francisco (City and County of), and

San Leandro, all of which are charter cities. Other affected non-charter cities with parcels include Fremont, Pleasanton, Dublin, Antioch, Pittsburg, Lafayette, Concord, Union City, and there are also parcels listed in Alameda County.

- 7) **Exemptions from Local Zoning in State Law.** Government Code 53091(a) contains the general rule that “each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated.” There are, however, several exceptions listed from city and county zoning in the same code section for the following reasons: a) Certain types of school facilities; b) the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, wastewater, or electrical energy by a local agency; and, c) location or construction of facilities for the production, generation, storage, treatment, or transmission of water, or for the production or generation of electrical energy, facilities that are subject to Section 12808.5 of the Public Utilities Code, or electrical substations in an electrical transmission system that receives electricity at less than 100,000 volts. [Zoning ordinances of a county or city shall apply to the location or construction of facilities for the storage or transmission of electrical energy by a local agency, if the zoning ordinances make provision for those facilities.]

Government Code 53096 contains provisions that allow the board of a local agency, by vote of four-fifths of its members, and in spite of the provisions above, to render a city or county zoning ordinance inapplicable to a proposed use of property if the local agency at a noticed public hearing determines by resolution that there is no feasible alternative to its proposal. The governing board may not render a zoning ordinance inapplicable to a proposed use of property when the proposed use of the property by the local agency is for facilities not related to storage or transmission of water or electrical energy, including, but not limited to, warehouses, administrative buildings or automotive storage and repair buildings. The governing board of a local agency may make these determinations at the time it approves an environmental impact report on its proposal.

In *Delta Wetlands Properties v. County of San Joaquin*, the Court of Appeal of California, Third District, ruled in a case involving these particular code sections and included in the footnotes that “Section 53096 does not apply to the storage and transmission facilities themselves. Rather, it authorizes a local agency to exempt facilities which are integral to them.... Moreover, section 53096 applies only to “local agencies” consistent with the construction that limits subdivision (e) [of Section 53091] to local agencies.

In this manner, it may be that BART has the authority to exempt itself from local zoning by the affected city or county, but only for its own facilities, and not for private projects like TOD mixed-use developments. In *Delta Wetlands*, the Court determined that “it would make no grammatical sense to except *private commercial projects* from a rule that does not apply to them.”

- 8) **Policy Considerations.** The Committee may wish to consider the following issues:
- a) **Override of Police Powers Delegated to Cities and Counties.** According to the League of California Cities, in opposition, “Authorizing a transit agency to regulate density, height and parking requirements transfers this essential local government function from their hands to a single special district. Bestowing land use power onto a transit agency that is unaccountable to community members is contrary to existing law and may violate

Article XI, Section 11 of the State Constitution. In *In re Werner (1900) 129 Cal.567.*, the court struck down a state statute which granted a sanitary district the power ‘to make and enforce all necessary and proper regulations from suppressing disorderly and disreputable resorts and houses of ill fame within the district and to determine the qualifications of persons authorized to sell alcohol.’ The court held that the powers granted to the sanitary district violated Article XI, section 11 because the ‘police power’ must be exercised locally by cities and counties only (as provided by the Constitution).”

- b) **Establishes Precedent for Future Diminishing of Local Land Use Planning.** According to the American Planning Association, California Chapter, “APA California opposes altering state policy to replace local land use planning by allowing BART to zone its own property. This bill sets a precedent for other entities to request the same authority to zone their own properties however they wish. In addition, BART would not be required to take into consideration what is currently on the ground, and what these local jurisdictions have already accomplished to increase density around transit. APA California believes the approach in AB 2923 will set a troubling precedent for further diminishing of local land use planning in future legislation.”
- c) **Charter Cities and Home Rule.** As referenced in Comment #5, above, charter cities enjoy supremacy over their municipal affairs. This bill does not contain any provisions declaring that the contents of the bill are a “statewide affair” – which would then apply the requirements of the bill to charter cities in addition to all general law cities.

The Committee may wish to ask the author about his intent to include charter cities in the bill. The Committee may also wish to note that while the Legislature can declare its intent to apply provisions of a bill to charter cities, the true determination of whether a specific area is a municipal affair or a matter of statewide concern will be determined solely by the courts.

- d) **Highlighted TOD Projects.** BART’s May 2017 Guidelines document highlights several recent TOD projects:
- i) **Pleasant Hill/Contra Costa Centre Transit Village.** This project is a four-block, mixed-use TOD project on BART-owned property and includes 442 residential units (20% affordable), 39,000 square feet of retail and a 1,552 space replacement parking garage. The first phase was completed in 2010, phase two broke ground in 2017 adding 200 market rate apartments and 2,300 square feet of retail. BART worked with Contra Costa County to redesign the streets on either side of the station to blend with the surrounding community.
- ii) **San Pablo Avenue Specific Plan.** This plan was adopted by the City of El Cerrito in 2014, and encourages TOD at El Cerrito’s BART stations through a form based code. While it sets height requirements, it does not dictate use, and establishes no minimum requirement for parking paired with TDM requirements for developments providing less than 0.5 spaces per unit. The Plan enables flexibility on Specific Plan regulations for certain projects, and in this manner, the City is able to provide developers with greater value if they in turn offer public benefits.
- iii) **San Leandro TOD Strategy.** The City of San Leandro adopted its Downtown TOD Strategy in 2007 and has taken steps over the last decade to see plans become a



reality. The first phase of new construction included a retail center, an office complex and 115-units of affordable family housing. Additional zoning code revisions that allow more intense/dense development were completed in 2016 bringing the zoning code in alignment with the TOD Strategy and setting the stage for additional residential, mixed-use and office development.

According to BART's website, the TOD program has completed 12 developments at 11 stations, totaling 1,975 housing units and 194,000 square feet of commercial space, and include the following projects: Castro Valley, Richmond Phase I, Fruitvale Phase I, Pleasant Hill/Contra Costa Centre, Ashby, West Dublin/Pleasanton, Hayward, East Dublin, MacArthur, South Hayward, and San Leandro.

Also in the pipeline are the following upcoming TOD projects: MacArthur Transit Village, San Leandro Senior Apartments, Walnut Creek, Fruitvale Transit Village Phase II, Pleasant Hill, Workday World Headquarters at West Dublin/Pleasanton Station, and Coliseum Transit Village.

The Committee may wish to consider that all of the projects highlighted above have gone through the normal planning process involving the affected city or county, its zoning code, and any applicable entitlements necessary for the development.

- e) **BART's Stated Goals on TOD projects.** BART's May 2017 Guidelines document contains information about how BART will approach TOD developments, and states that "BART will only solicit projects for development in areas with transit supportive land use regulations. BART understands it can be successful in TOD only by being a team player, that means only developing where there are willing partners and where local governments have demonstrated through their plans, policies and actions that are transit-supportive."

BART's May 2017 Guidelines document also states that "BART's best TOD projects were built as part of a shared vision in partnership with local communities. BART realizes the importance of working with cities and communities to help assure that station area plans and specific plans are achievable...."

The May 2017 Guidelines document also discusses the role of local governments in their TOD policy, stating that "Local Governments are key partners in BART's TOD program, and play an important role in the planning and implementation of BART TOD projects. BART will only solicit proposals for TOD in localities that have an adopted plan allowing for transit-supportive land uses consistent with BART's TOD Guidelines."

The Committee may wish to consider how this bill aligns with BART's stated vision for interacting collaboratively with local governments on TOD projects.

- f) **BART position on this bill.** BART has a "Neutral" position on the bill, and notes that the bill "could benefit BART's TOD program by accelerating the rezoning of sites for residential and mixed-use development...however, this approach this bill takes poses a shift in the working relationship between BART and its local jurisdictions."

Additionally, BART notes that "Local governments have always been key partners in BART's TOD program and most have been supportive of development occurring on

BART property. BART realizes the importance of working with local jurisdictions to help ensure station area and specific plans are achievable, support TOD, and address existing community concerns.”

- g) **Why BART-Owned Parcels Only?** The bill deals specifically with parcels of land that BART owns, near existing BART stations. The Committee may wish to consider why increasing density in this manner should only occur around BART stations, as opposed to parcels that are NOT owned by BART that are near existing BART stations.

Additionally, if the goal is to have higher density and more affordable housing and mixed-use near transit stations, the Legislature may wish to impose a statewide approach.

- h) **Alternative Approaches?** The Committee may wish to consider other alternative approaches that respect the Constitutional land use authority of cities and counties, including the following:

- i) **Alternative Approach 1: Station Area Plans.** Require an affected city or county that has BART-owned parcels described in the bill to adopt a “station area plan” within two years of the BART Board adopting TOD zoning standards. The station area plan would be required to *consider* the BART TOD zoning standards during a public hearing, and require findings to be made if the city or county opts to zone the land differently.

The “station area plan” would be similar to a specific plan, which is a planning tool used by local agencies that effectively establishes a link between implementing policies of the general plan and the individual development proposals in a defined area. In general, specific plans can be developed in response to a single policy issue, or to address each applicable policy of the general plan, or it may also diverge from the issues contained in the general plan into other subjects viewed by the community as being of relevance.

Some jurisdictions with BART stations have already adopted the approach of using station area plans. For instance, the City of Oakland adopted the Lake Merritt Station Area Plan, a specific plan for the area around the Lake Merritt BART Station in downtown Oakland, in December of 2014. The Lake Merritt Station Area Plan is a long-range planning document that provides a framework for future development that, over the next 25 years, looks to add to the neighborhood 4,900 new housing units, 4,100 new jobs, over 400,000 feet of additional retail, and over 1.2 million square feet of office spaces. The adoption of the plan was accompanied by Planning Code and General Plan Amendments, new design guidelines, and new zoning and height area maps.

This approach would also ensure public participation at the city or county level, as these plans are formulated and adopted through a formalized process with multiple opportunities for public hearings, testimony, and adoption by the legislative body of the city or county.

- i) **Alternative Approach 2. Updating of Applicable General Plan and Zoning Ordinances.** Require an affected city or county to update parts of their applicable general plans and zoning ordinances within two years of BART updating the TOD Zoning standards. In amending the general plan or applicable zoning ordinance, the city or county would be required to *consider* BART TOD zoning standards during a public hearing, and require findings to be made if the city or county opts to zone the land differently.
  - ii) **Alternative Approach 3. Mandate Minimum Densities Around Transit Stations.** APA California suggests requiring a minimum density and affordability standard on BART properties, and allowing each jurisdiction to figure out how best to meet those minimums. This approach, however, could also run into some of the constitutional issues raised above.
- 9) **Arguments in Support.** Supporters argue that the bill could potentially facilitate deployment of hundreds of new homes – both market-rate and affordable – precisely where they are needed, near major rail transit. Supporters also note that transit-oriented projects are notoriously contentious and approvals can take up to a decade, hindering development.
- 10) **Arguments in Opposition.** Opponents argue that the 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. Opponents also argue that the bill’s provisions may violate the California Constitution.
- 11) **Double-referral.** This bill is double-referred to the Natural Resources Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Non-Profit Housing Association of Northern California [CO-SPONSOR]  
State Building and Construction Trades Council [CO-SPONSOR]  
A.Philip Randolph Institute  
Bay Area Council  
Brightline Defense  
CalAsian Chamber  
California Apartment Association  
California League of Conservation Voters  
California YIMBY  
City and County of San Francisco  
Council of Infill Builders  
Greenbelt Alliance  
Habitat for Humanity  
International Association of Sheet Metal, Air, Rail and Transportation Workers  
Mission Hiring Hall  
Sheet Metal Workers' Local Union No. 104  
Silicon Valley Leadership Group  
SPUR (in concept)  
TransForm  
Young Community Developers  
YIMBY Action  
Individual letters (6)

**Neutral**

San Francisco Bay Area Rapid Transit District (BART)

**Concerns**

California State Association of Counties

**Opposition**

American Planning Association, California Chapter (unless amended)  
League of California Cities  
Individual letters (2)

**Analysis Prepared by:** Debbie Michel / L. GOV. / (916) 319-3958